

CLERK'S COPY.
TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940-1941

No. ~~54~~ 2

**MARTIN J. BERNARDS AND LENA BERNARDS,
PETITIONERS,**

vs.

**M. R. JOHNSON, CATHERINE COLLINS, THE
UNITED STATES NATIONAL BANK OF PORT-
LAND, ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT**

PETITION FOR CERTIORARI FILED APRIL 12, 1940.

CERTIORARI GRANTED APRIL 29, 1940.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 54

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PETITIONERS,

vs.

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UNITED STATES NATIONAL BANK OF PORT-
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[fol. 1]

**IN UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF OREGON**

In Bankruptcy No. B-19268

In the Matter of MARTIN J. BERNARDS AND LENA BERNARDS,
Debtors

PETITION—Filed August 10, 1934

To the Honorable the Judges of the United States District
Court for the District of Oregon:

The petition of Martin J. Bernards and Lena Bernards
respectfully represents and shows:

1. That during all the times in this petition mentioned the
petitioners were and now are husband and wife.

2. That for more than six months last past the petitioners
were and are now residents and inhabitants of Orenco, in
the County of Washington, State of Oregon, within said
District.

3. That they are the owners and in the actual possession
of the farm lands particularly described in Schedules B and
D attached to this petition, in the interests therein set forth,
and that they are actively engaged in the cultivation and
operation of said farm lands, and that their entire income
is derived from farming operations; that said farming
operations occur in the County of Washington, within said
judicial District; that they are unable to meet their debts
as they mature, and that they desire to effect a composition
and extension of time to pay their debts under Section 75
of the Bankruptcy Act, and the acts amendatory thereof
and supplemental thereto.

[fol. 2] 4. That this Court has appointed A. W. Hoffman
Conciliation Commissioner, within said District, for the
County of Washington, State of Oregon, and said Commis-
sioner has qualified.

5. That your petitioners have endeavored to, but have
failed to obtain the acceptance of a majority in number and

amount of all creditors whose claims are affected by a composition or extension.

6. That the schedule hereto annexed marked A, and verified by the oath of your petitioner Martin J. Bernards, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said Act.

7. That the schedule hereto annexed marked B, and verified by the oath of your petitioner Martin J. Bernards, contains an accurate inventory of all of his property, both real and personal, and such further statements concerning said property as are required by the provisions of said Act.

8. That the schedule hereto annexed marked C, and verified by the oath of your petitioner Lena Bernards, contains a full and true statement of all of her debts, and (so far as it is possible to ascertain) the names and places of residence of her creditors: and such further statements concerning said debts as are required by the provisions of said Act.

[fol. 3] 9. That the schedule hereto annexed marked D, and verified by the oath of your petitioner Lena Bernards, contains an accurate inventory of her property, both real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Wherefore, your petitioners pray that this petition may be approved by the Court, and that proceedings be had in accordance with said Section and the acts amendatory thereof and supplemental thereto, and that your petitioners be granted such other and further relief as to this Court may seem just and proper.

(Signed) Martin J. Bernards, Lena Bernards, Petitioners, J. P. Kavanaugh, R. N. Kavanaugh, Attorneys for Petitioners.

*Duly sworn to by Martin J. Bernards and Lena Bernards.
Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 4] IN UNITED STATES DISTRICT COURT

[Title omitted]

RESTRAINING ORDER—Filed August 10, 1934

It appearing to the court from the petition of the above-named Martin J. Bernards and Lena Bernards that they are the owners and in possession of the following described real property, situated in the County of Washington, State of Oregon:

(Description omitted.)

[fol. 5] and that the petitioner, Martin J. Bernards, is the owner of the following described personal property, to wit: Water Works Extension Bonds of the City of Orenco of the Tualatin Valley, a municipal corporation of the State of Oregon, as follows: Nos. 6, 7, 8, 9, 10, 11 and 41, for \$1000 each, but \$400 has been paid on account of Bond No. 6, leaving a balance in the principal of said bond in the sum of \$600, together with the interest coupons attached to each bond; that said personal property is now in the possession of plaintiff, The United States National Bank of Portland, (Oregon), and is pledged to secure the payment of a debt of plaintiff, M. R. Johnson to said plaintiff, The United States National Bank of Portland, (Oregon).

And it appearing that in an action in the Circuit Court of the State of Oregon, for the County of Washington, wherein M. R. Johnson and The United States National Bank of Portland (Oregon) are plaintiffs, and Martin J. Bernards and Lena Bernards (the petitioners) and others, are defendants, the plaintiffs obtained a decree of foreclosure of mortgages on said real property, and of a pledge of said personal property, and that proceedings are now pending in said cause for the sale of all of said property upon execution, and that unless restrained by order of this court, the sheriff of the County of Washington, State of Oregon, will sell all of said property on Saturday, the 11th day of August, A. D. 1934, and let the purchaser at said sale [fol. 6] into possession of said property, and that the petitioners will thereby be deprived of the possession of said real property.

And it appearing that petitioners are entitled to an order restraining further proceedings for the sale of said property, as prayed for in their petition.

Be It Therefore Ordered that J. W. Connell, sheriff of the County of Washington, State of Oregon, his deputies and assistants, and plaintiffs M. R. Johnson and The United States National Bank of Portland (Oregon), and their agents and attorneys, be, and each of them are hereby enjoined and restrained from proceeding with the sale of any of said property upon execution, or in anywise interfering with the possession of said property by the petitioners until the further order of this court.

Dated this 10th day of August, A. D. 1934.

John H. McNary, Judge.

[File endorsement omitted.]

[fol. 7]

Form No. 282

RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
District of Oregon, ss:

I hereby certify and return that I served the annexed Restraining Order on the therein-named John W. Connell, at his residence, at 6:00 P. M. by handing to and leaving a true and correct copy thereof with the said John W. Connell personally at Hillsboro in said District on the 10th day of August, A. D., 1934.

J. T. Summerville, U. S. Marshal. By G. M. Watson,
Deputy.

M. Fees	\$8.00
Exp.	\$1.25
Total	\$9.25

[fol. 8]

Form No. 282

RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
District of Oregon, ss:

I hereby certify and return that I served the annexed Restraining Order on the therein-named E. B. Tongue,

at the intersection of Main Street and the P. R. & N. Railroad tracks, at 6:15 P. M. by handing to and leaving a true and correct copy thereof with the said E. B. Tongue personally at Hillsboro in said District on the 10th day of August, A. D., 1934.

J. T. Summerville, U. S. Marshal. By G. M. Watson,
Deputy.

M.

[fol. 9]

Form No. 282

RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
District of Oregon, ss:

I hereby certify and return that I served the annexed Restraining Order on the therein-named M. R. Johnson, at his residence, corner of 4th Ave. & 1st St., at 6:55 P. M. by handing to and leaving a true and correct copy thereof with the said M. R. Johnson personally at Forest Grove in said District on the 10th day of August, A. D., 1934.

J. T. Summerville, U. S. Marshal. By G. M. Watson,
Deputy.

[fol. 10]

Form No. 282

RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
District of Oregon, ss:

I hereby certify and return that I served the annexed Restraining Order on the therein-named United States National Bank, of Portland, Oregon, 6th & Stark St., at 1:55 P. M. by handing to and leaving a true and correct copy thereof with Walter M. Cook, Cashier of said bank personally at Portland in said District on the 13th day of August, A. D., 1934.

J. T. Summerville, U. S. Marshal. By G. M. Watson,
Deputy.

Return on service of Restraining Order—Filed August 13, 1934. G. H. Marsh, Clerk.

[fol. 11] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OF REFERENCE—Filed Aug. 10, 1934

Whereas, the petition of Martin J. Bernards and Lena Bernards filed in this Court on the 10th day of August, A. D. 1934, praying that he be afforded an opportunity to effect a composition or an extension of time to pay his debts under Section 75 of the Bankruptcy Act, having been duly approved by order of this Court on the 10th day of August, A. D. 1934, it is thereupon ordered that said matter be referred to A. W. Hoffman, one of the Conciliation Commissioners of this Court, to take such further proceedings therein as are required by said section; and that the said Martin J. Bernards and Lena Bernards shall attend before said conciliation commissioner on the 16th day of August, 1934, at Hillsboro, in said district and thenceforth shall submit to such orders as may be made by said conciliation commissioner or by this Court relating to the proceedings under said section.

Witness, the Honorable John H. McNary, Judge of the said Court, and the seal thereof, at Portland, in said District, on the 10th day of August, A. D. 1934. By G. H. Marsh, Clerk. L. S. Rogers, Deputy. (Seal.)

[File endorsement omitted.]

[fol. 12] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DISCHARGING CONCILIATION COMMISSIONER—Filed
October 17, 1934

It appearing to the Court that the above named debtors filed a petition in this Court on August 10, 1934 and that said petition was referred to A. W. Hoffman, a duly appointed and qualified conciliation commissioner of this Court for the county in which the said debtors reside; that said conciliation commissioner has filed a report herein, reporting to the Court that the debtors and their

creditors cannot agree on terms of composition or extension:

And it further appearing that said conciliation commissioner has certified to the Court that his duties as conciliation commissioner have been completed:

It is therefore Ordered that the said A. W. Hoffman, conciliation commissioner in said cause be and he is hereby discharged from further proceeding in this case.

John H. McNary, Judge.

[File endorsement omitted.]

[fol. 13] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION TO RE-REFER CASE—Filed October 27, 1934

To the Honorable, the Judges of the United States District Court for the District of Oregon:

At this time come Martin J. Bernards and Lena Bernards and respectfully represent and show:

1. That their petition in the above entitled cause was heretofore referred to A. W. Hoffman, Conciliation Commissioner for the County of Washington, in the District of Oregon, that said Conciliation Commissioner called a first meeting of creditors: that your petitioners attended said meeting and petitioner, Martin J. Bernards was examined by the creditors.

2. That at said meeting a proposal was submitted by your petitioners for the compromise and extension of their debts: that a later meeting of creditors was called by said Conciliation Commissioner and said proposal was not accepted or approved by said creditors.

3. That your petitioners desire to submit another proposal to their creditors for the compromise and extension of their debts and that for this purpose it is necessary [fol. 14] that their petition in the proceedings herein be re-referred to said Conciliation Commissioner.

Wherefore, your petitioners pray for an order of this Court again referring their petition in the proceedings herein to A. W. Hoffman, Conciliation Commissioner for

the county of Washington, in the District of Oregon, for the purpose of enabling your petitioners to submit another proposal to said creditors for the compromise and extension of their debts.

Martin J. Bernards, Lena Bernards. J. P. Kavanaugh, R. N. Kavanaugh, Attorneys for Petitioners.

*Duly sworn to by Martin J. Bernards and Lena Bernards.
Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 15] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER RE-REFERRING CASE—Filed October 29, 1934

At this time come Martin J. Bernards and Lena Bernards, the above-named debtors and move the Court for an order referring the above-entitled cause to A. W. Hoffman, conciliation commissioner for the county of Washington, in the District of Oregon, in order to enable the debtors to submit another proposal of compromise and extension to their creditors:

It Is Therefore Ordered that said cause be and it is hereby re-referred to A. W. Hoffman, conciliation commissioner for the county of Washington, in the District of Oregon, to enable the above-named debtors to submit another proposal of compromise and extension to their creditors.

Dated this 29th day of October, 1934.

John H. McNary, Judge.

[File endorsement omitted.]

[fol. 16] IN UNITED STATES DISTRICT COURT

[Title omitted]

REPORT OF CONCILIATION COMMISSIONER—Filed December 17, 1934

To Honorable John H. McNary and James Alger Fee, Judges of the District Court of the United States for the District of Oregon:

In pursuance to an order issued out of the District Court of the United States for the District of Oregon on the 29th

day of October, 1934, I held the second meeting of creditors after giving due notice as required by law at Hillsboro, in the county Courtroom at the county courthouse, on the 4th day of December, A. D. 1934, at 10:00 o'clock in the forenoon. The debtors at that time and place filed their written proposal of composition and extension of their debts. After the debtors had been examined by the attorney for M. R. Johnson, the majority creditor, Mr. Johnson, made a verbal rejection of the proposal. At that time I set the 14th day of December, A. D. 1934, as the date for filing application for confirmation of the extension proposal.

[fol. 17] In accordance with the above and the records hereto attached I hereby submit to your Honorable Court that the duties of the conciliation commissioner in the matter of Martin J. Bernards and Lena Bernards, debtors, have been completed.

Respectfully submitted this 15th day of December, A. D. 1934.

A. W. Hoffman, Conciliation Commissioner for the county of Washington, State of Oregon.

[File endorsement omitted.]

[fol. 18] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED PETITION—Filed December 19, 1934

To the Honorable the Judges of the United States District Court for the District of Oregon:

At this time come Martin J. Bernards and Lena Bernards and file their amended petition and respectfully represent and show:

1. That on or about the 10th day of August, 1934, the petitioners, as debtors, filed their petition for relief as debtors under Section 75 of the Bankruptcy Act and the acts amendatory thereof and supplemental thereto, and this petition is amendatory of said original petition.

2. That during all the times in this petition mentioned the petitioners were and now are husband and wife.

3. That for more than six months last past the petitioners were and now are residents and inhabitants of Orenco, in the County of Washington, State of Oregon, within said district.

4. That they are the owners and in actual possession of the farm lands described in Schedules "B" and "D" attached to this petition, in the interests therein set forth, and that they are actively engaged in the cultivation of said farm lands as a farm, and that their entire income is derived [fol. 19] from such farming operations; that said farming operations occur in the County of Washington, within said judicial district; that they are unable to meet their debts as they mature; and that they desire to obtain the benefits of the Acts of Congress relating to bankruptcy and particularly Section 75 thereof, as amended by an act entitled "An Act to Amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States,' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto"; approved June 28, 1934.

5. That your petitioners have endeavored to obtain a composition and extension of their debts, but have failed to obtain acceptance of a majority in number and amount of all creditors whose claims are affected by composition or extension proposals.

6. That the schedule hereto annexed, marked "A" and verified by the oath of your petitioner, Martin J. Bernards, contains a true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said Acts of Congress.

7. That the schedule hereto annexed, marked "B" and verified by the oath of your petitioner, Martin J. Bernards, contains an accurate inventory of all of his property, both real and personal, and such further statements concerning said property as are required by the provisions of said Acts of Congress.

[fol. 20] 8. That the schedule hereto annexed, marked "C" and verified by the oath of your petitioner, Lena Bernards, contains a full and true statement of all of her debts, and (so far as it is possible to ascertain) the names and places

of residence of her creditors; and such further statements concerning said debts as are required by the provisions of said Acts of Congress.

9. That the schedule hereto annexed, marked "D" and verified by the oath of your petitioner, Lena Bernards, contains an accurate inventory of her property, both real and personal, and such further statements concerning said property as are required by the provisions of said Acts of Congress.

Wherefore, your petitioners pray that they, and each of them be adjudged by this court to be bankrupts within the purview of said Acts of Congress.

(Signed) Martin J. Bernards, (Signed) Lena Bernards, Petitioners. J. P. Kavanaugh, R. N. Kavanaugh, Attorneys for Petitioners.

*Duly sworn to by Martin J. Bernards and Lena Bernards.
Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 21]

[Title omitted]

SCHEDULE "A"

Unsecured Debts

1. Peter Duyck, Forest Grove, Oregon. loan, \$70.00.
2. Marcella Pool, Hillsboro, Oregon. Services, \$40.00.
3. Charles Kyler, Orenco, Oregon. Laborer, \$100.00.
Paid \$40.00 since filing original schedule; balance due \$60.00.
4. Gordon Vikan, Portland, Oregon Laborer, \$22.00.
5. Lucy Duyck, Forest Grove, Oregon. Promissory note, \$4,500.00 and interest.
6. Pleasant Smith, Yamhill, Oregon. Balance due on purchase of ewes and lambs, \$82.50. Paid since filing of original schedules.
7. Paul Patterson, Hillsboro, Oregon. Attorneys's fees, \$67.50.
8. Pool & Gardner, Hillsboro, Oregon. Lumber, \$18.50.
9. Delta Drugstore, Delta, Oregon. Account, \$6.21.
10. Pickens Blacksmith Shop, Hillsboro, Oregon. Account, \$52.00.

11. Hillsboro Seed Co., Hillsboro, Oregon. Account \$43.92.

12. Imperial Seed Co., Hillsboro. Account, \$22.30.

13. Ireland Hardware Co., Hillsboro, \$38.60.

[fol. 22] 14. Christensen Machine Shop, Hillsboro, Account \$80.00.

15. Alaska Junk Co., Portland, Oregon. Account, \$15.00.

16. J. E. Haseltine & Co., Portland. Account, \$16.28.

17. J. E. Berkheimer & Co., Portland, Roofing, \$228.50.

18. Shell Oil Co., Portland, Oregon. Gasoline, \$99.92.

19. Dr. Nichol, Hillsboro. Veterinary services, \$7.50.

20. Dr. Huggins, Hillsboro. Medical services, \$25.00.

21. Dr. Ralph Fenton, Portland. Medical services, \$150.00.

22. Dr. Raymond Watkins, Portland. Medical services, \$100.00.

23. Winifred Waible, Hillsboro. Domestic Service, \$75.00.

24. Emanuel Hospital, Portland. Hospital service, \$25.00.

25. St. Vincent's Hospital, Portland. Hospital Service, \$40.00.

26. Portland Eye, Ear, Nose & Throat Hospital, Portland. Hospital service, \$30.00.

27. Dr. Fitzgibbon, John H., Portland. Medical services, \$43.00.

28. Herman Smith, Hillsboro. Baling straw, \$155.00.

29. Marty Bros., Beaverton. Hay, \$150.00.

30. Industrial accident Commission, Salem. Insurance, \$98.00.

31. Norman Arms, Forest Grove. Plumbing \$50.00.

32. Columbia Elevator Co., Portland. Pump work, \$17.00.

33. John Deere Plow Co., Portland. Spreader, \$140.00; erroneously listed in original schedule as \$40.00.

34. Ike Mullins, Portland. Tractor parts, \$80.00.

35. Dr. A. O. Pitman, Orenco. Medical services, \$63.00.

36. Portland Electric Power Co., Portland. Account, \$125.00.

[fol. 23] 37. City of Orenco. Judgment, \$30.00 and costs.

38. A. Lindgren, Forest Grove. Judgment, \$15.00.

39. A. R. Sawtelle and George T. Withington, Portland. Judgment, \$200.00 and costs.

40. J. P. Kavanaugh, Portland. Services rendered prior to June 28, 1934, \$2,000.00. Amount claimed by debtors to be too large.

41. J. P. Kavanaugh, Portland. Services rendered after June 28, 1934, in contemplation of bankruptcy, \$1,000.00; paid, \$175.00.

42. Taxes, State, County, and City, real estate and personal taxes, \$14,389.45, plus accruing taxes.

43. McKenzie Motor Company, Hillsboro. For repairs to Ford Pickup automobile, \$33.10.

44. Ted Crane, residence unknown. For labor, \$23.00.

45. White Company. Portland, Oregon. Truck parts, \$22.00.

46. Warrant of the City of Orenco, dated February 2, 1934, in favor of Clark, Skulason & Clark, on which there is an unpaid balance of \$1,478.60, together with interest thereon at the rate of 6% from April 13, 1931. This is an obligation of the city of Orenco, and petitioner Martin J. Bernards is the owner of about one-half of the taxable property of said city, and it is probable that when a levy is made for the payment of this warrant, about one-half of the balance due, or \$739.30 with interest, may be impressed upon real property owned by Martin J. Bernards situated in the City of Orenco.

47. Warrant of the City of Orenco, dated November 9, 1917, issued to F. I. Webber, in the sum of \$100.00, with interest at the rate of 6% per annum. No payments have been made on this warrant and it is doubtful validity.

[fol. 24] *Duly sworn to by Martin J. Bernards. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 25] IN UNITED STATES DISTRICT COURT

[Title omitted]

ADJUDICATION OF BANKRUPTCY—Filed December 19, 1934

At Portland, in said District, on the 19th day of December, 1934, before the Honorable James Alger Fee, Judge of said Court in Bankruptcy, the petition of Martin J.

Bernards that he be adjudged a bankrupt, within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said Martin J. Bernards is hereby declared and adjudged a bankrupt accordingly.

Witness the Honorable James Alger Fee, Judge of the said Court, and the seal thereof, at Portland, in said District, on the 19th day of December, 1934.

G. H. Marsh, Clerk, by L. S. Rogers, Deputy Clerk.
(Seal.)

[File endorsement omitted.]

[fol. 26] IN UNITED STATES DISTRICT COURT

[Title omitted]

ADJUDICATION OF BANKRUPTCY—Filed December 19, 1934

At Portland, in said District on the 19th day of December, 1934, before the Honorable James Alger Fee, Judge of the said Court in Bankruptcy, the petition of Lena Bernards that she be adjudged a bankrupt, within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said Lena Bernards is hereby declared and adjudged a bankrupt accordingly.

Witness the Honorable James Alger Fee, Judge of the said Court, and the seal thereof, at Portland, in said District, on the 19th day of December, 1934.

G. H. Marsh, Clerk, by L. S. Rogers, Deputy Clerk.
(Seal.)

[File endorsement omitted.]

[fol. 27] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OF REFERENCE—Filed December 20, 1934

Whereas, Martin J. Bernards and Lena Bernards of Orengo in the County of Washington and District afore-

said, on the 19th day of December, 1934, were duly adjudged bankrupt upon a petition filed in this Court by them on the 19th day of December, 1934, according to the provisions of the Acts of Congress relating to bankruptcy:

It Is Therefore Ordered, That said matter be referred to Willard L. Marks, one of the Referees in Bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said Martin J. Bernards and Lena Bernards shall attend before said Referee on the 5th day of January, 1935, at Albany in said district and thenceforth shall submit to such orders as may be made by said Referee or by this Court relating to said — bankruptcy.

Witness the Honorable James Alger Fee, Judge of the Court, and the seal thereof, at Portland in said District, on the 20th day of December, 1934.

G. H. Marsh, Clerk. By L. S. Rogers, Deputy Clerk.

[File endorsement omitted.]

[fol. 28] IN UNITED STATES DISTRICT COURT

[Title omitted]

MINUTE ENTRY OF PROCEEDINGS BEFORE REFEREE—May 21,
1935

This being the day appointed by the Court for the continuation of the first meeting of creditors in the above bankruptcy by order made on February 14th, the day appointed for continuation of said first meeting I, the undersigned referee in Bankruptcy, in charge of this bankruptcy, do hereby certify;

(Inter Alia)

The Bankrupts were each present in person.

The Bankrupts, Martin J. Bernards, resumed the stand and his examination by creditors was concluded.

The creditors all waived examination of the bankrupt, Lena Bernards.

Claims were filed at or prior to said meeting as follows:

On motion made and carried J. W. Bailey, A. Griffith and H. A. Richardson were selected as appraisers to appraise the property of said estate.

No further business appearing the meeting adjourned.
Willard L. Marks, Referee in Bankruptcy.

[fol. 29] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION—Filed September 30, 1935

To the Honorable, the Judges of the District Court of the United States for the District of Oregon:

The Petition of Martin J. Bernards, one of the above-named bankrupts, respectfully represents and shows:

That the above-named bankrupts, who are husband and wife, filed their joint debtors' petition in this Court and cause to obtain a composition and extension in the payment of their debts; that said petition was referred to the Conciliation Commissioner of the County of Washington in the State and District of Oregon; that in proceedings taken before said Conciliation Commissioner petitioners were unable to obtain the consent of a majority in number and amount of his creditors, and accordingly said Conciliation Commissioner returned all of the proceedings and documents in said cause with his report that an agreement could not be effected for a composition or extension of the debts of said debtors on the proposals made, or otherwise; that in due season thereafter the above-named bankrupts filed herein their amended petition praying that they be adjudged bankrupts; that an adjudication of bankruptcy was duly made and entered, and all proceedings were re-[fol. 30]ferred to Willard L. Marks, Referee in Bankruptcy, and are now in his possession and under his control;

That by an Act of Congress entitled "An Act to Amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July 1, 1898, and acts amendatory thereof and supplemental

thereto" approved August 28, 1935, the authority of Conciliation Commissioners has been enlarged, and it is in said Act provided that he shall continue to act as Conciliation Commissioner and act as Referee in Bankruptcy when a farmer debtor amends his petition, asking to be adjudged a bankrupt under the provisions of subsection (s) of Section 75 of the Bankruptcy Act, and shall continue to so act until the case has been fully disposed of;

That the Referee in Bankruptcy to whom said proceedings were referred is of the opinion that the affairs of the bankrupt estates can be better administered by the Conciliation Commissioner of the County of Washington, in the State and District of Oregon, the county in which the property of the bankrupts is situated, but that an order of this court should be made and entered authorizing and directing that the proceedings and documents now in his possession be transferred to this court to be referred by the court to [fol. 31] the Conciliation Commissioner of said County of Washington;

Wherefore, your petitioner prays an order of this Honorable Court authorizing and directing said Referee to transfer to this court all documents and records in his possession in the matter of the estates of said bankrupts, together with a report of all proceedings therein to the time of said transfer.

Kavanaugh & Kavanaugh, Attorneys for Petitioner.

[File endorsement omitted.]

Duly sworn to by Martin J. Bernards. Jurat omitted in printing.

[fol. 32] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DIRECTING REFEREE TO RETURN RECORD, ETC.—Filed
September 30, 1935

At this time comes Martin J. Bernards, one of the above-named bankrupts, and presents his duly verified petition, praying that Willard L. Marks, Referee in Bankruptcy, be authorized and directed to transfer to this court all proceed-

ings in the matter of the estates of the above-named bankrupts;

And it appearing to the court that the above-named Martin J. Bernards and Lena Bernards were heretofore adjudged bankrupts; that the proceedings in the above-entitled cause were referred to Willard L. Marks, Referee in Bankruptcy, and that they are now in his possession and under his control; that by an Act of Congress, commonly known as the Frazier-Lenke Act, passed by the last Congress and approved by the President August 28, 1935, the authority of the Conciliation Commissioner has been enlarged and it is in said Act of Congress provided that he shall continue to act as Conciliation Commissioner and act as Referee in Bankruptcy when a farmer debtor amends his petition, asking to be adjudged a bankrupt under the provisions of subsection (s) of Section 75 of the Bankruptcy Act, and shall continue to so act until the cause [fol. 33] has been finally disposed of;

And it further appearing that the Referee in Bankruptcy to which said proceedings have been referred is of the opinion that the affairs of the bankrupt estate can be better administered by the Conciliation Commissioner of the County of Washington in the District of Oregon, the county in which the property of the bankrupts is situated, but that an order of this court should be made and entered authorizing and directing that the proceedings and documents now in his possession be transferred to this court to be referred by the court to the Conciliation Commissioner of said County of Washington;

Be It Therefore Ordered that the order of reference heretofore made to Willard L. Marks, Referee in Bankruptcy, be and the same is hereby recalled, and that said Referee in Bankruptcy be and he is hereby authorized and directed to transmit to this court all records, documents, and proceedings in the matter of the estates of the above-named bankrupts now in his possession, and prepare and file with this court a report of all proceedings had before him up to the time of transfer; and

Be It Further Ordered that said proceedings be referred to H. A. Kuratli, Conciliation Commissioner of the county of Washington in the State and District of Oregon.

Dated this 30th day of September, 1935.

John H. McNary, Judge.

[File endorsement omitted.]

[fol. 34] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OF REFERENCE—Filed October 15, 1935

Whereas, Martin J. Bernards and Lena Bernards of Orenco, in the County of Washington and District aforesaid, on the 19th day of December, 1934, were duly adjudged a bankrupt upon a petition filed in this Court by them on the 19th day of December, 1934, according to the provisions of the Acts of Congress relating to bankruptcy; and pursuant to an order filed on September 30, 1935

It Is Ordered, That said matter be referred to Henry A. Kuratli, one of the Conciliation Commissioners of this Court, to take such further proceedings therein as are required by said Acts; and that the said Martin J. Bernards and Lena Bernards shall attend before said Conciliation Comm'r on the 21st day of October, 1935, at Hillsboro in said district, and thenceforth shall submit to such orders as may be made by said Conciliation Commissioner or by this Court relating to said --- bankruptcy.

Witness the Honorable John H. McNary, Judge of the said Court, and the sale thereof, at Portland in said District, on the 15th day of October, 1935.

G. H. Marsh, Clerk, By L. S. Rogers, Deputy Clerk.
(Seal.)

[File endorsement omitted.]

[fol. 35] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION—Filed *July 15* ~~October 1~~, 1936

To the Honorable H. A. Kuratli, conciliator for Washington County:

Comes now the undersigned who are the bankrupts listed in the above-entitled proceedings and represent and show to the conciliator herein, as follows:

I

That on or about the 10th day of August, 1934, the above-named filed in the bankruptcy division of the above-entitled

Court their certain petition pursuant to Section 75 of the Bankruptcy Act for the purpose of offering to their creditors a composition of or extension of time for the payment of their debts and said petition was thereafter approved by the United States District Court for the District of Oregon, all as shown by the records on file in the office of the Clerk of the above-entitled Court.

II

That the creditors refused to accept the composition or extension as proposed and said petitioners filed a petition to be adjudged bankrupt under Section 75 of the Bankruptcy Law, which petition was granted prior to the 29th day of May, 1935.

[fol. 36]

III

That on or about the 29th day of May, 1935, an execution was issued in Washington County pursuant to a decree of foreclosure and the Sheriff of said county did on the 29th day of June, 1935, sell the real property described in the bankrupts' petition on file herein as Parcels Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 to M. R. Johnson and the United States National Bank of Portland for the sum of \$65,000.00, and the certificate of sale was issued to said M. R. Johnson and the United States National Bank and Catherine Collins.

IV

That the above-named petitioners filed objections to the confirmation of said sale and the Circuit Court of Washington County thereafter confirmed said sale on or about the 20th day of July, 1935.

V

That the above-named petitioners are farmers under and pursuant to the Frazer-Lenke Act as amended and approved by the President of the United States, August 29, 1935, and under said Act are entitled to the possession of said premises and the proceeds therefrom.

VI

That M. R. Johnson is endeavoring to exercise control of said premises hereinbefore described by parcels and did

on the 7th day of July, Notify and direct Martin J. Bernards, one of the undersigned to refrain from going upon any of the lands therein described.

That the provisions of the Frazer-Lemke Act passed and [fol. 37] approved by the President of the United States specifically entitle the bankrupts herein to have complete custody and actual possession of the premises and the crops thereon for the purpose of paying indebtedness and enabling said bankrupts to compromise and settle said indebtedness during the period of bankruptcy as provided in said acts.

That M. R. Johnson, above mentioned, has endeavored to gain exclusive possession of the real property and the crops therefrom and is endeavoring to harvest said crops and said crops are being harvested in such a manner that the benefit therefrom is lost all to the ultimate damage, loss and detriment to the undersigned as petitioners and also to the loss of the general creditors.

That under the provisions of said Act all parties except the bankrupts should be restrained from exercising any control over the real property and the bankrupt is entitled to immediate possession and complete control of the realty as well as management of the crops.

Wherefore, Petitioners pray the above-entitled conciliator for an order granting the undersigned immediate possession, control and management of the real properties described in said bankrupts petition and referred to as Parcels Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16; and for the further order restraining the Sheriff of Washington County and M. R. Johnson and the United States National Bank and Catherine Collins and either or any [fol. 38] of them from transferring without purchase of said property in accordance with the terms and provisions of the Frazer-Lemke Act as amended; and for the further order specifically extending the period of redemption as provided in said Frazer-Lemke Act.

Martin J. Bernards.

Duly sworn to by Martin J. Bernards. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 39] IN UNITED STATES DISTRICT COURT

[Title omitted]

REPLY—Filed August 8, 1936

Come now the above-named bankrupts and for reply to the answer and petition of M. R. Johnson and the United States National Bank of Portland, a corporation, admit, deny and allege as follows, to wit:

1

Deny each and every allegation and matter set forth in said petition and answer and the whole thereof except any facts set forth therein which are specifically alleged in said bankrupts' petition or any facts set forth in said answer which are copies of Court records in the above-entitled Court or records of the Circuit Court of Washington County, Oregon, and

For Further and Separate Reply said petitioners allege

I

That the purchase price of the premises described in petitioners' schedule of bankruptcy on file herein was not en-[fol. 40] tirely supplied by the said M. R. Johnson.

II

The above bankrupts herein specifically and affirmatively allege that said bankrupts have an actual equity in said premises and farm in the amount of approximately \$80,000.00 in excess of the sum borrowed from said M. R. Johnson and said petitioners furthermore allege that the property referred to in paragraph IX of said answer and petition was agreed between the said M. R. Johnson and the petitioners to be of less value than the taxes and as a result thereof by said agreement the said petitioners and M. R. Johnson permitted the foreclosure of the delinquent tax certificates and said foreclosure in nowise and in no manner damaged or lessened the value of the farm property owned by the petitioners.

III

Said petitioners furthermore allege that throughout said proceedings and prior to the filing of said petitions for bankruptcy the petitioners have acted in good faith and except for the refusal of the said M. R. Johnson to accept

offers of compromise as shown by the records said petitioners could have obtained sufficient loan to pay the indebtedness of all creditors except the creditor, Mrs. Duyck, [fol. 41] which creditor at said time agreed to cancel said debt if Johnson would accept the offer of compromise and the said M. R. Johnson refused said offer of compromise for the purpose of endeavoring to recover said farm and defeat the petitioners rights therein.

Wherefore, Said petitioners having fully replied to the answer of M. R. Johnson and the United States National Bank of Portland, a corporation, pray that said answer and petition be dismissed and that said bankrupts have the relief prayed for in the petition on file herein and in addition thereto an order and decree cancelling and setting aside the deed executed by the Sheriff of Washington County, Oregon, conveying or attempting to convey title to the premises referred to in said bankrupts' petition and recorded on Book 159, Page 406 of the records of said County, and

Further Pray, That said M. R. Johnson and the United States National Bank of Portland, a corporation, be required to render a full and complete accounting of crops harvested and property removed from said farm and an order permitting the said bankrupts to the full benefits and provisions of the Frazer-Lemke Act as amended by Congress.

Martin J. Bernards, Petitioners; Glenn R. Jack of Attorneys for Bankrupts.

[fol. 42] *Duly sworn to by Martin J. Bernards. Jurat omitted in printing.*

[fol. 42½] [File endorsement omitted.]

Filed October 1, 1936. G. H. Marsh, Clerk. L. S. Rogers, Deputy.

[fol. 43] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL—Filed September 19, 1936

H. A. Kuratli, Conciliator in Bankruptcy;

Joseph M. Loomis, Trustee in Bankruptcy in the above-entitled proceedings; and

Bagley & Hare, Attorneys for said Trustee;

You and each of you are hereby notified that the above-named bankrupts hereby appeal to the District Court of the United States for the District of Oregon from the orders heretofore entered by the Conciliation Commissioner appointing the trustee in bankruptcy which order and appointment was made on the 29th day of August, 1936, and the 3rd day of September, 1936, and hereby appeal from the entire order entered on said dates, and each and every portion thereof on the grounds and for the reason that the decree entered on the 29th day of August, 1936, is invalid and not based upon law or fact, and that the subsequent order appointing said trustee is invalid as not having been based upon the Frazier-Lemke Law as amended, or the bankruptcy law, or either of them.

(Signed) Martin J. Bernards, Lena Bernards.

[File endorsement omitted.]

Filed Oct. 1, 1936, G. H. Marsh, Clerk.

[fol. 44] *Duly sworn to by Martin J. Bernards and Lena Bernards. Jurat omitted in printing.*

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONFIRMING ORDERS OF CONCILIATION COMMISSIONER— Filed December 15, 1936

Martin J. Bernards and Lena Bernards, the above-named bankrupts, having heretofore filed with H. A. Kuratlie, Conciliation Commissioner for Washington County, Oregon, Their petition for review in the form of and entitled "Notice of Appeal" from that certain order of said Conciliation Commissioner for Washington County, in the above-entitled cause, dated August 29, 1936, and that certain order of said Conciliation Commissioner dated September 4, 1936, and said Conciliation Commissioner having transmitted said petition or notice to this court, together with his certificate thereon, and the court having considered the same and being fully advised,

Now, Therefore, it is Considered and Ordered That the aforesaid orders of said Conciliation Commissioner be, and

they are hereby affirmed, and said petition or notice be, and it is hereby, denied.

Dated at Portland, Oregon, this 14th day of December, 1936.

James Alger Fee, Judge of the above-entitled Court.

[File endorsement omitted.]

[fol. 45] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION—Filed January 4, 1937

To Honorable H. A. Kuratli, Conciliator for Washington County:

Comes now the above-named bankrupts and respectfully petition the United States Conciliation Commissioner-Referee for Washington County, State of Oregon as follows:

First. That your petitioners have duly filed their amended petition under Section 75, sub-section "s" of the Bankruptcy Act, known particularly as the Frazier-Lemke Farm Mortgage Act, and that the said petition was allowed as being properly filed and the bankrupts were duly adjudicated as bankrupts by the Honorable James Alger Fee and that the said petition has not been withdrawn, set aside or nullified by any United States Court, and that the said proceedings are now and have at all times in the past been in full force and effect.

Second. Your petitioners further respectfully request that the Conciliation Commissioner-Referee aforesaid immediately proceed with the appraisal of the bankrupts' property, as requested in amended petition.

Third. That the Order made and entered in August 8th appointing a trustee for the said bankrupts be held for [fol. 46] naught for the reason that the said Conciliation Commissioner has no authority under the Bankruptcy Act aforementioned to appoint a trustee, and for the further and separate reason that the said trustee was not appointed or elected by a majority in number or amount of the un-

secured creditors attending the said meeting, and that in support of this contention the bankrupts hereby refer to the affidavits marked exhibit "A" and "B" and "C" attached hereto, to which reference is hereby made and which are made a part thereof the same as if incorporated herein.

Fourth. And the bankrupts further request removal of the said trustee, for the reason that he is a party in interest with the chief creditor, M. R. Johnson, of the bankrupts' estate.

Fifth. That the trustee aforementioned be ordered to account to the Court for any and all properties seized by him or which came into his possession as such trustee, and in the event that any of such property has been disposed of by the said trustee that he shall account therefor to the Court and pay into the Court the proceeds realized from said sale, and that any property remaining in his possession shall be returned to the Court for the use of the bankrupts.

Sixth. That all of the bankrupts' exemptions be set aside to them and that the bankrupts be put into immediate possession of the whole of their estate subject to the encumbrances and the liens of the creditors.

Seventh. That M. R. Johnson be required to return to the Court for the benefit of the bankrupts' estate the following serially numbered bonds: Numbers 6-7-8-9-10-11 and 41 of the Water Works Extension of the City of Orenco of the Tualatin Valley, a municipal corporation of the State of Oregon. That the said bonds were placed by the bankrupts in the trust of M. R. Johnson prior to the filing of the first petition of the bankrupts herein, and that the said M. R. Johnson in violation of his trust wrongfully and unlawfully, without knowledge or consent of the bankrupts, pledged and hypothecated the said bonds to the United States National Bank of Portland, Ore., as collateral for a private loan from the United States National Bank to M. R. Johnson. That the cash value of the said bonds is in excess of the sum of \$7,000.00 with accrued interest.

Eighth. That the bankrupts be permitted to include in their schedule of assets a chose in action including three separate causes of action, the first cause of action for \$8200.00, the second cause of action for \$7000.00 and the third cause of action for \$3080.00 said chose of action being

the subject matter of the law action of Martin J. Bernards vs. M. R. Johnson now on file in the Circuit Court of the State of Oregon for Washington County, which action was for the wrongful and unlawful attachment of the bankrupts' personal property prior to the filing of the first petition in bankruptcy. That the said attachment was secured [fol. 48] by the false allegation that bankrupts' debt to M. R. Johnson was unsecured whereas it was secured by the pledge of good and sufficient collateral. That the said debt was obtained by M. R. Johnson on assignment for the purpose of securing the farm equipment of the debtors.

Ninth. That M. R. Johnson and Catherine Collins, mortgage creditors be required to return to the Court for the benefit of the bankrupts estate any and all crops or proceeds from crops and account for damages done to the bankrupts' estate because of their wrongful and unlawful possession of the bankrupts' premises and property in contravention to the bankrupts' rights under section 75 of the Bankruptcy Act. That the approximate measure of damages from the wrongful acts of M. R. Johnson and Catherine Collins cannot be summarized at this time.

Tenth. That the bankrupts pray for such order or orders as are necessary to carry out the intentions of the Bankruptcy Act, and the bankrupts further pray for such other and further ancillary relief and remedies as may be required.

(Signed) Martin J. Bernards, Lena Bernards.

[fol. 49] *Duly sworn to by Martin J. Bernards. Jurat omitted in printing.*

[File endorsement omitted.]

Filed February 4, 1937. G. H. Marsh, Clerk.

[fol. 50] EXHIBIT "A" TO PETITION

[Title omitted]

AFFIDAVIT

I, Francis Duyck, being first duly sworn, depose and say upon oath that I was present at a meeting of creditors held

before the Hon. H. A. Kuratli, Conciliator at Hillsboro, Oregon, on or about the 29th day of Aug. 1936; that I was acting as the duly appointed and qualified proxy of Lucy Duyck, my mother, who is an unsecured creditor of the above named bankrupts; that I first voted for Jos. M. Loomis, for trustee, but upon advice from Lucy Duyck, I withdrew the said vote for Jos. M. Loomis, and was advised by the Conciliator that the voting was not closed when I withdrew the said vote.

Francis Duyck, Affiant.

Subscribed and sworn to before me this 31 day of Dec., 1936. Rose Cave, Notary Public for Oregon. My Commission Expires Mch. 7, 1939. (Seal.)

[fol. 51]

EXHIBIT "B" TO PETITION

[Title omitted]

AFFIDAVIT

I, Charles Kyler being first duly sworn depose and say upon oath that I am an unsecured creditor of the above named bankrupts and that I attended a meeting of creditors at a hearing before the Hon. H. A. Kuratli, in Hillsboro, Oregon, on the 29th day of August 1936, at which time the election of a trustee was had; that I am a creditor of said bankrupts' estate for the sum of sixty (\$60.00) Dollars: that I did not cast a vote for Jos. M. Loomis for Trustee.

Charles Kyler, Affiant.

Subscribed and sworn to before me this 30 day of Dec., 1936. Rose Cave, Notary Public for Oregon. My Com. Expires Mch. 7, 1939. (Seal.)

[fol. 52]

EXHIBIT "C" TO PETITION

[Title omitted]

AFFIDAVIT

I, Winfred Dallmann being first duly sworn depose and say upon oath that I am an unsecured creditor of the above

named bankrupts and that I attended a meeting of creditors at a hearing before the Hon. H. A. Kuratli, in Hillsboro, Oregon, on the 29th day of August, 1936, at which time the election of a trustee was had; that I am a creditor of said bankrupts estate for the sum of seventy-five (\$75.00) dollars; that I did not cast a vote for Jos. M. Loomis for trustee.

Winifred Dallmann, Affiant.

Subscribed and sworn to before me this 2d day of January, 1937. C. J. Stickney, Notary Public for Oregon. My Comm. Expires May 25, 1937. (Seal.)

[fol. 53] STATE OF OREGON,
County of Multnomah, ss:

I, Wm. L. Brewster, hereby certify that I have accepted due service of the within petition by receiving a copy of the same prepared and certified to by ——— on the 4th day of Jan., 1937.

Wm. L. Brewster, Attorney for Catherine H. Collins.

STATE OF OREGON,
County of Washington, ss:

I, Geo. R. Bagley hereby certify that I have accepted due service of the within petition by receiving a copy of the same prepared and certified to by ——— on the 4th day of Jan., 1937.

Geo. R. Bagley, by N. E. Stangel, Attorney for Joseph M. Loomis, Trustee.

[fol. 54] STATE OF OREGON,
County of Washington, ss:

I, Martin Bernards, being first duly sworn depose and say that I presented the foregoing petition to E. B. Tongue, attorney for M. R. Johnson, on January 2nd and for acceptance of service; he refused to accept service and I then left a copy of the foregoing petition, prepared and certified to

by me as a true copy to E. B. Tongue, personally and in person.

Martin Bernards.

Subscribed and sworn to before me this 4th day of January, 1937. Rose Cave, Notary Public for Oregon. My Commission expires March 7, 1939. (Seal.)

STATE OF OREGON,
County of Washington, ss:

I, Martin Bernards, being first duly sworn, depose and say that I presented the foregoing petition to Arthur D. Platt, attorney for the United States National Bank, Portland, Oregon, on January 4th for acceptance of service; he refused to accept service, and I then left a copy of the foregoing petition, prepared and certified to by me as a true copy, to Arthur D. Platt, personally and in person.

Martin Bernards.

Subscribed and sworn to before me this 4th day of January, 1937. Rose Cave, Notary Public for Oregon. My Commission expires March 7, 1939. (Seal.)

Filed Feb. 4, 1937. G. H. Marh, Clerk, L. S. Robers, Deputy.

[fol. 55] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER SUSTAINING MOTION TO DISMISS PETITION—Filed January 11, 1937

At Hillsboro in said District, on this 11th day of January, 1937, I, H. A. Kuratli, Conciliation Commissioner and Referee in Bankruptcy in the above entitled cause, hereby certify:

That the petition of Martin J. Bernards and Lena Bernards, husband and wife; bankrupts, filed herein on the 4th day of January, 1937, praying for relief under Subsection "s" of Section 75 of the Bankrupt Act of possession of all of the property enumerated in the schedules of said bank-

rupts, for an order revoking the order of August, 8, 1936, for the removal of the Trustee, and for the return by M. R. Johnson of Warrants Nos. 6, 7, 8, 9, 10, 11, and 41 of the Waterworks Extension of the City of Orenco and for permission to include in their schedule of assets supposed claims against M. R. Johnson, and that Catherine Collins be required to turn over to the Court for the benefit of the bankrupts' estate all crops and proceeds of crops; coming on to be heard upon the motion of Joseph M. Loomis, Trustee [fol. 56] in Bankruptcy, to dismiss said petition upon the ground that all the matters and things set out in said petition have been previously adjudicated and no review thereof has been had, or if review was taken, such actions of the Referee have been approved on review; and the said bankrupts appearing in person and by B. G. Skulason, their counsel, and the said Joseph M. Loomis, Trustee, appearing by Bagley & Hare, his attorneys, and after hearing arguments of respective counsel,

It Is Now Ordered that the motion to dismiss said petition be and the same hereby is sustained for the reason that all matters and things in said petition alleged have heretofore been considered upon petition filed by said bankrupts and decided adversely to said bankrupts, and said orders have all become final and conclusive.

Dated this 11th day of January, 1937.

(Signed) H. A. Kuratli, Conciliation Commissioner and Referee in Bankruptcy.

[File endorsement omitted.]

Filed February 4, 1937. G. H. Marsh, Clerk, by L. S. Rogers, Deputy.

[fol. 57] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION—Filed January 13, 1937

To the Honorable James Alger Fee, Judge of Said Court:

Your petitioners respectfully represent that they are the bankrupts above named; that H. A. Kuratli, the commissioner before whom said matter is pending, has heretofore

held the present Frazer-Lemke Act unconstitutional, appointed a trustee and ordered him to sell all the personal property belonging to the bankrupts on the 14th day of January, 1937, at 10:00 o'clock A. M.; that your petitioners heretofore applied to said commissioner for an order restraining the trustee from making such sale, which petition was on the 11th day of January, 1937, by an order denied; that your petitioners have no opportunity because of lack of time to secure a review of said order before such sale is made; that they have in preparation a comprehensive petition for a review by this court of all the decisions of said commissioner including his holding that said Act is unconstitutional and such petition will be ready to file tomorrow. The said order of sale covers all the personal property of the bankrupts and if the same is made they will be left destitute, without furniture, adequate clothing or sufficient food for themselves and their six young children and they will be wholly deprived of all benefits under the Bankruptcy [fol. 58] Act. Reference is hereby made to the records and files in said matter.

Your petitioners, therefore, pray that an order issue immediately restraining the trustee from making said sale and that a date be fixed for him to show cause why such order should not be made permanent.

B. G. Skulason, Attorney for Petitioners.

Duly sworn to by B. G. Skulason. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 59] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING PETITION FOR RESTRAINING ORDER—JANUARY
13, 1937

Now at this day come the above named bankrupts by Mr. B. G. Skulason, of counsel, and present to the court a petition praying that a restraining order issue out of this court temporarily restraining the conciliation commissioner from selling the personal property of the bankrupts and for an

order for the trustee herein to show cause why said restraining order should not be made permanent, Mr. Arthur D. Platt appearing for the creditors; and the court having heard the arguments of counsel, it is Ordered that said motion be and the same is hereby denied.

(Signed) James Alger Fee, Judge.

Filed January 14, 1937. G. H. Marsh, Clerk, by L. S. Rogers, Deputy.

[fol. 60] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR REVIEW—Filed January 29, 1937

To the Honorable James Alger Fee, Judge of Said Court:

Your petitioners, the above named bankrupts, respectfully request a review of the order of Honorable H. A. Kuratli, Conciliation Commissioner in said matter dated and entered on the 11th day of January, 1937, granting a motion of the trustee herein to dismiss their petition of January 4, 1937 filed with said commissioner, and your petitioners hereby except to said order and assign error as follows. The said commissioner erred in granting said motion and dismissing said petition on the following grounds:

(a) Your petitioners are farmers and have filed their petition in bankruptcy under, and are entitled to relief under sub-section (s) of Section 75 of the Bankruptcy Act and have in all things complied with the provisions of the law in the premises.

(b) In failing to proceed with the appraisal of the property of the bankrupts.

(c) In refusing to declare void the order appointing a trustee.

(d) In refusing to order said trustee to account for properties of the bankrupt seized by him or coming into his possession or for the proceeds of any sale by him of such property.

(e) In refusing to set aside the exemptions of the petitioners and to put them as such bankrupts into possession of their whole estate.

(f) In refusing to consider the matter of a return to the bankrupt estate by M. R. Johnson of the bonds mentioned in the seventh paragraph of the petition.

(g) In refusing to include as part of the bankrupt estate the choses in action mentioned in paragraph eight of the petition.

(h) In refusing to order the creditors, M. R. Johnson and Catherine Collins, to return to said estate all crops and proceeds of crops, and account for damage to the bankrupt estate as specified in paragraph ninth of the petition.

Skulason & Skulason, Attorneys for Bankrupts.

[File endorsement omitted.]

Filed, February 4, 1937. G. H. Marsh, Clerk.

Duly sworn to by Martin J. Bernards. Jurat omitted in printing.

[fol. 62] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO SET ASIDE ALL ORDERS OF COURT—Filed April 13, 1938

Comes now bankrupts and moves to vacate and set aside all orders of this Court, and of all the Referees and Conciliation Commissioners where it was sought to set aside or delay the carrying out any of the provisions of the Bankrupt Act particularly the provisions of section 75 of the Bankrupt Act and this cause be promptly reinstated without any additional filing fees or charges.

W. E. Richardson, Attorney for Bankrupts.

Points Relief Upon:

1. That the Referee in Bankruptcy and the Conciliation Commissioners had no jurisdiction to pass on the adjudi-

cation of Bankrupts of the qualifications of Bankrupts to come under Sec. 75 of the Bankrupt Act.

2. That the Referee in Bankruptcy and Conciliation Commissioners had no jurisdiction to proceed until they had complied with the mandatory provision of Bankrupt Act and particularly the provisions and the amendments of Sec. 75 of the Bankrupt Act.

3. Amendments of Sec. 75 of Bankrupt Act Chapter 41—3rd Session of 75th Congress and Approved March 4th, 1938.

4. That after adjudication no further affirmative action by the petitioners is necessary until the Referee and Conciliation Commissioners had complied with the mandatory provisions of the Bankrupt Act and particularly Section 75.

W. E. Richardson, Attorney for Bankrupts.

I hereby certify that the foregoing motion is, in my opinion, well founded in law.

W. E. Richardson, Of Attorney for Bankrupts.

[File endorsement omitted.]

[fol. 63] IN UNITED STATES DISTRICT COURT

[Title omitted]

REPLY—Filed April 31, 1938

Comes now bankrupts and in reply to all answers on file herein denies each and every allegation thereof except as alleged in bankrupts petition.

(Signed) W. E. Richardson, Attorney for Bankrupts.

† [File endorsement omitted.]

[fol. 64] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION—Filed February 8, 1935

To the Honorable Judges of the District Court of the United States, for the District of Oregon, and to Willard L. Marks, Referee in Bankruptcy in said District:

The petition of Martin J. Bernards and Lena Bernards, the above named bankrupts, respectfully represents and shows:

That heretofore they have filed herein their petition for compromise and extension of their debts; that as a result of proceedings duly had and taken, and before the Conciliation Commissioner of the County of Washington and State of Oregon, petitioners have failed to obtain acceptance of their proposals of composition and extension of debts by a majority in number and amount of all creditors whose claims were affected by such proposed composition and extension;

That thereafter, and in due course, they amended their petition and asked to be adjudged bankrupts; that an adjudication of bankruptcy was duly made and entered herein and that said proceedings have been referred to Willard L. Marks, one of the duly appointed and qualified referees in bankruptcy in the District of Oregon;

That said referee in bankruptcy has appointed Friday, the 3th day of February, 1935, at 2:00 o'clock in the afternoon, the county court room of the Washington County Court House at Hillsboro, in the District of Oregon, as the time and place for the first meeting of the creditors of the bankrupts:

That your petitioners desire that all of the property owned by them and described in their schedules attached to the amended petition, whether pledged, encumbered or unencumbered by liens, or otherwise, be appraised, and that appraisers be appointed to make such appraisal; and that your petitioners be allowed to retain possession of all of said real and personal property and pay for the same under the terms and conditions set forth in subsection (s) of Section 75 of the Bankruptcy Act;

Wherefore, Your Petitioners pray that appraisers be appointed herein for the appraisal of all of the property

of the bankrupts, whether pledged, encumbered or unen-
[fol. 66] cumbered by liens, or otherwise, and that the
petitioners be allowed to retain possession of all of their
property and pay for the same under the terms and con-
ditions set forth in subsection (s) of Section 75 of the
National Bankruptcy Act; and that petitioners be granted
such other and further relief as may be necessary, appro-
priate and equitable herein.

Martin J. Bernards, Lena Bernards, Petitioners.
J. P. Kavanaugh, R. N. Kavanaugh, Attorneys
for Petitioners.

*Duly sworn to by Martin J. Bernards and Lena Bernards.
Jurat omitted in printing.*

[File endorsement omitted.]

Filed October 10, 1935, and forwarded to Con. Com.

G. H. Marsh, Clerk.

Received from Con. Com. and filed July 29, 1938.

G. H. Marsh, Clerk, by L. S. Rogers, Deputy.

[fol. 67] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT
OF OREGON

No. B-19268

In the Matter of MARTIN J. BERNARDS and LENA BERNARDS,
Bankrupts

ORDER AND DECREE—Filed May 10, 1938

This matter coming on to be heard before the Honorable
James Alger Fee, judge of the above entitled court, upon
the motion of Catherine H. Collins, M. R. Johnson and
The United States National Bank of Portland (Oregon)
and J. M. Loomis, trustee, appearing by their respective
attorneys for an order and decree herein based upon the
findings of fact and conclusions of law made and filed
herein, and the same having been duly considered:

It is hereby ordered, adjudged and decreed:

1. That the bankrupts' petition filed January 15, 1937
be dismissed.

2. That bankrupts' motion filed April 13, 1938 to vacate and — aside all orders of this Court, etc. be denied.

3. That the title to the real property situated in Washington County, Oregon, hereinbefore described and referred to in Finding of Fact XV and elsewhere in these bankruptcy proceedings as Parcel 15, be and it is hereby decreed to be in Catherine H. Collins free and clear from all right, title and interest of said bankrupts under this bankruptcy proceeding.

4. The title to the real property in Washington County, [fol. 68] Oregon, hereinbefore described and referred to in Finding XV and elsewhere in these bankruptcy proceedings as Parcels 1-14, inclusive, and Parcel 16, be and it is hereby decreed to be in M. R. Johnson and The United States National Bank of Portland (Oregon) free and clear of all right, title and interest of Martin J. Bernards and Lena Bernards under this bankruptcy proceeding.

5. That the actions of the trustee in taking possession of and selling and disposing of the personal property listed and enumerated in the bankrupts' schedules and the payment and expenses of said proceeding set forth in the trustee's answer be ratified and confirmed.

6. That the election by the creditors, confirmation by the Conciliation Commissioner and qualification of J. M. Loomis, as Trustee of the bankrupt estate of Martin J. Bernards and Lena Bernards, is in all things regular, and be, and hereby are, confirmed.

7. That the orders of the Conciliation Commissioner hereinbefore made *by* ratified and approved, and that said orders and the orders of this Court herein be a bar to any further proceedings on the part of the said bankrupts under subdivision "s" of Section 75.

8. That the trustee herein proceed as by law required to pay any additional expenses necessary for him to incur, the trustee's compensation and the fees for his attorney. [fol. 69] the preferred claims and thereupon distribute the remainder of the moneys in his hands to the common creditors of said bankrupts whose claims have been presented and allowed prorata; and otherwise the trustee and Conciliation Commissioner shall take such proceedings as

will speedily complete and close this bankruptcy proceeding.

Dated this 10th day of May, 1938.

(Signed) James Alger Fee, District Judge.

[File endorsement omitted.]

[fol. 70] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER AFFIRMING ORDER OF CONCILIATION COMMISSIONER—
Filed May 10, 1938

Martin J. Bernards and Lena Bernards, the above named Bankrupts, having heretofore filed with H. A. Kuratli, Conciliation Commissioner for Washington County, Oregon, their petition for review of that certain order of said Conciliation Commissioner, dated the 11th day of January, 1937, denying the petition of said bankrupts, filed with said Commissioner on the 4th day of January, 1937, and said Conciliation Commissioner having duly certified such cause and therewith transmitted said petition, the motion to dismiss the same, and the order of dismissal:

And the Court having considered the same and the arguments of respective counsel, and being now fully advised:

Now, Therefore, it is Considered and Ordered that the order of the Conciliation Commissioner of Washington County, Oregon, dated the 11th day of January, 1937, dismissing the petition of said bankrupts, filed on January 4th, 1937, be, and the same hereby is affirmed;

And it is Further Ordered that the said Bankrupts are not [fol. 71] entitled to the relief, or any part thereof, sought in said petition so filed with said Commissioner on January 4th, 1937.

Dated at Portland, Oregon, on this 10 day of May, 1938.

(Signed) James Alger Fee, Judge of the Above Entitled Court.

[File endorsement omitted.]

[fol. 72] IN UNITED STATES DISTRICT COURT

[Title omitted]

OBJECTIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW—
Filed April 25, 1938

Comes now the bankrupts by their attorney W. E. Richardson, and objects to the Findings of Fact and Conclusions of Law on file herein, for the reason that:

1. The bankrupts by their attorney, W. E. Richardson, at the trial of the issues of law and fact in this matter, which were heard before this Court April 13, 1938, did not admit the validity of any proceedings or orders made and entered by the Court or the Conciliation Commissioner.
2. The bankrupts by their attorney only waived the presentation of certain documentary evidence relating to the foreclosure and sale of the bankrupts' property in the above entitled Court and the State Courts of the State of Oregon, for the county of Washington, and by such waiver did not require any of the parties in interest to produce in Court such documents as related to the sale and foreclosure of bankrupts' property.

W. E. Richardson, Attorney for Bankrupts.

Dated at Portland, Oregon, this 25th day of April, 1938.

[File endorsement omitted.]

[fol. 73] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed September 10,
1938

To the Clerk of the United States District Court for the
District of Oregon:

You are hereby requested, pursuant to a request from Paul P. O'Brien, clerk of the United States Circuit Court of Appeals for the Ninth Circuit, under date of September

1, 1938, to prepare and certify a transcript of all of the papers included in the Appellants' list of papers and orders filed with the Circuit Court of Appeals to enable the Court to exercise its discretion in considering the petition for appeal. Said papers and orders were filed upon the following dates:

1. Debtors' Petition, less schedules, filed Aug. 10, 1934.
2. Restraining Order and Service filed Aug. 10, 1934.
3. Order of Reference to the Conciliation Commissioner, filed Aug. 10, 1934.
4. Order dismissing Conciliation Commissioner, filed Oct. 17, 1934.
5. Petition for re-reference, filed Oct. 27, 1934.
6. Order of Re-reference, filed Oct. 29, 1934.
- [fol. 74] 7. Final Report of the Conciliation Commissioner, filed Dec. 17, 1934.
8. Amended Petition, filed Dec. 19, 1934.
9. Order of Adjudication of Martin J. Bernards, Dec. 19, 1934.
10. Order of Adjudication of Lena Bernards, Dec. 19, 1934.
11. Order of Reference to Marks, filed Dec. 19, 1934.
12. Order appointing appraisers to Marks (May 1935?).
13. Petition filed Sept. 30, 1935.
14. Order of Re-reference to Kuratli, filed Sept. 10, 1935.
15. Formal Order of Reference to Kuratli, filed Oct. 15, 1935.
16. Bankrupts' Petition to Kuratli of July 15, 1936, (filed in District Court Oct. 1, 1936).
17. Bankrupts' Notice of Appeal from Appointment of Trustee, (filed with Kuratli Sept. 19, 1936) Filed Oct. 1, 1936.
18. Fee's order approving Trustee, filed Dec. 15, 1936.
19. Bankrupts' Petition of Jan. 4, 1937, filed with Kuratli same date. Filed with District Court Feb. 4, 1937.
20. Conciliation Commissioner's Order of Jan. 11, 1937, filed with Kuratli same date. Filed with District Court Feb. 4, 1937.
21. Bankrupts' Petition for Restraining order of sale of Personal Property filed Jan. 13, 1937.
22. Fee's Order Denying Restraining Order, filed Jan. 13, 1937.
23. Petition for Review to Fee, filed Jan. 15, 1937.

24. Motion filed Apr. 13, 1938.
25. Reply to Answer, filed Apr. 13, 1938.
26. Order and Decree, filed May 10, 1938.
27. Order Affirming Conciliation Commissioner, filed May 10, 1938.

In addition to the above the Appellants request a transcript of the following papers:

[fol. 75] 28. Schedule "a" of Amended Petition of Unsecured Debts, only, filed Dec. 19, 1934.

29. Petition to the Court and to the Referee for Appraisal of Property, filed Willard Marks on Feb. 8, 1935. Filed in the District Court Oct. 10, 1935.

30. Objections to the Findings of Fact and Conclusions of Law, filed Apr. 25, 1938.

31. Bankrupts' reply filed with Kuratli August 8, 1936 and filed with District Court, October 1, 1936.

Martin J. Bernards, One of the Appellants.

[File endorsement omitted.]

[fol. 75a] IN UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD

To G. M. Marsh, Clerk of the U. S. District Court for the District of Oregon:

Please prepare transcript of record on appeal the following papers, to be added to the appellants Apostles of Records now on file in the above entitled Court:

1. The Bankrupts' Schedule of personal property in the Bankrupts' Amended Petition.

Signed, Martin J. Bernards, One of Appellants.

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[fol. 76] IN UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Title omitted]

STIPULATION AS TO RECORD

It is hereby stipulated and agreed by and between the parties hereto as follows :

That the parties waive any requirement to include in the transcript of record the schedules attached to the petitions of the debtors and the detailed description of real property wherever the same occurs.

That any requirement as to inclusion of acceptance of services of papers by the several parties be waived.

That the Clerk of the District Court of the United States for the District of Oregon *by* relieved of any responsibility and liability by the omission of the foregoing record herein.

Dated this 14th day of September, 1938.

Martin J. Bernards, for Appellants. W. L. Brewster, for Catherine H. Collins. Platt, Platt and E. B. Tongue, for M. R. Johnson and United States National Bank. Bagley & Hare, for Trustee.

Unsecured debts of schedule "A," and personal property of schedule "B," are to be included in transcript.

Martin J. Bernards.

[fol. 77] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 78] SCHEDULE "B"

(10)

Personal Property

85 acre crop of hairy vetch severed from land and sold to I. C. Sanford of Portland, Oregon, at 6¼¢ (six and one-fourth cents) per pound. \$500.00 advanced on purchase price and balance of purchase price will depend on final statement of weights Sanford paid since filing original petition.

50 acres of oats and Austrian Peas; 10 tons of said peas sold to I. C. Sanford at \$2.60 per 100 pounds, along with the aforesaid hairy vetch and subject to said \$500.00 advance on such purchase price; about 40 to 50 tons of oat seed and feed separated from said Austrian Peas and vetch. Sanford paid since filing original petition.

100 acres of Victory Oats; 43 tons sold to Kerr-Gifford Co. for \$926.00; \$500.00 advanced against said sum for harvesting purposes and balance used also for harvesting purposes.

90 acres of Barley harvested; 40 tons sold to I. C. Sanford of Portland, Oregon, for \$1600.00, 11 tons on hand, purchase price received and used for seeding and operating.

550 tons of chopped hay.

2 tons of vetch seed.

110 tons baled straw.

4 horses.

1 cow.

235 ewes.

185 Lambs.

Said ewes and lambs mortgaged to Peter Bergersen. Amount due on note and mortgage \$1,340.82.

1 Caterpillar 34 combine, with pickup attachment and grain, grading attachment.

1 T A 40 International Tractor, Crawler type.

1 22-36 International Tractor.

1 15-30 International Tractor.

[fol. 79] 2 Big Six McCormick-Deering Mowers.

1 12-foot McCormick-Deering Rake.

1 4-bottom 16 inch John Deere Tractor plow.

1 3-bottom 14 inch John Deere tractor plow.

1 Fapce 3 row Hay cutter.

1 28-foot Corrugated Roller.

1 22-foot Spring tooth harrow.

1 33-foot Six Section Peg tooth harrow.

1 10-foot Van Bunt Drill.

1 7-foot Wooden Roller.

2 8-foot 22-inch Tandems Cover crop Discs.

1 14-inch walking plow.

1 10-foot 16 inch Tandems Tractor.

1 16-inch walking plow.

1 16-foot land plaster seeder. Disc.

1 hay Tedder.

1 3-horse McCormick-Deering Cultivator, 2 row.

- 2 2-horse cultivators.
- 2 1-horse cultivators.
- 1 1-horse clod smasher.
- 1 1-horse weeder.
- 1 set chop tools.
- 1 clipper power fanning mill.
- 1 hand fanning mill.
- 2 3-horse power single phase motor.
- 2 sets harness.
- 3 wagons.
- 3 hay racks.
- [fol. 80] 1 3½ Bain wagon and box.
- 1 Universal logging trailer.
- 2 5-ton white trucks, 1925 models.
- 1 3½-ton white truck 1921 model.
- 2 3-ton Packard trucks 1918-1919 models.
- 1 1928 Buick Sedan automobile.
- 1 1933 Ford pickup automobile.
- 1 3300-gallon gasoline tank.
- 1 5000-gallon gasoline tank.
- 1 11 x 12 Fairbanks-Morse Air Compressor.
- 2 water pumps.
- 1 air tank, 18 inches by 6 feet.
- 1 Fairbanks Scales, 3 by 4 foot platform.
- 1 Upright Steam Boiler, 6 horse.
- 115 Cords wood mortgaged to Patricia Duyck for \$175.00.
- 2 miles fencing.
- 1 Fodder chopper.
- 1 new Fertilizer spreader, purchased on conditional sales contract from John Deere Plow Co., balance due \$140.00.
- 1 used fertilizer spreader.
- 1 blower at American Sheet Metal Works, Portland, Oregon.

Water Works Extension Bonds of City of Orenco of Tualatin Valley, a municipal Corporation of the State of Oregon as follows: Nos. 6, 7, 8, 9, 10, 11, and 41 for \$1000.00 each. \$400.00 has been paid on account of No. 6 leaving a balance of \$600.00; together with coupons attached to each bond. Said bonds are pledged with United States National Bank of Portland, (Oregon) as security for payment of loan of M. R. Johnson to said United States National Bank of Portland, (Oregon).

[fol. 81] The following described real property has been attached by petitioner Martin J. Bernards in an action in

the Circuit Court of the State of Oregon for the county of Washington which is now pending, to wit:

1. Beginning on the west side of Chestnut Street in the City of Orenco, at a point 60 feet north of Block One (1) of the original townsite of Orenco; thence westerly on the north line of First Street 1015 feet to the Hillsboro Road; thence north 90 feet to the south line of the Oregon Electric Railroad right-of-way; thence easterly along said right-of-way to a point on west line of Chestnut Street; thence South 10 feet to the place of beginning containing 1,167 acres in Section 27, Township 1 North of Range 2 West of the Willamette Meridian.

2. Beginning at the Southeast corner of Lot No. two (2) in Boharts Subdivision; thence north along the east line of Lot No. two (2) to the South line of the Oregon Electric Railroad right-of-way; thence west along said right-of-way to the west line of Lot No. two (2); thence south to the Southwest corner of Lot No. two (2).

3. Beginning at a point on the north boundary line of the Oregon Electric Railroad right of way 230 feet north and 60 feet west of the Northwest corner of Block three (3) in the Orenco Townsite; thence in a westerly direction along the north boundary line of said right-of-way to a point on the west boundary line of the Geo. W. Ebbert's Donation Land claim where said boundary line of said Donation Land claim intersects the said right-of-way; thence North following the west line of said Donation Land Claim 200 feet thence in an easterly direction 200 feet north of and parallel with the north boundary line of the Oregon Electric Railroad right-of-way to the west boundary line of Robert Schneider tract of land as described in Book 88, page 596, of the Deed Records of Washington County; thence south and east following this boundary line of the said Robert Schneider tract to the southeast corner of said tract; thence south 30 feet to the place of beginning.

The following described household furniture contained in the residence of the petitioners at Orenco, Washington County, Oregon:

- 1 Universal Range.
- 1 Heater.
- 1 Davenport.
- 2 Overstuffed Chairs.

[fol. 82] 1 Overstuffed Rocker.

1 Dining Room Set.

1 Oak Rocker.

1 Wicker Chair.

1 Wicker Rocker.

1 Library Table.

1 Pool Table 3½ x 7.

1 Mahogany Bedroom Set.

4 Bedsteads.

1 Typewriter.

1 Adding Machine.

1 Edison Radio.

1 Piano.

1 Phonograph.

1 Maytag Electric Washing Machine.

3 Rugs.

Small Library.

Linens.

Dishes, crockery, cooking utensils, silverware.

Unpaid Accounts

City of Orenco, Judgment \$30.00.

Leveret Adams, Hillsboro, Nursery stock \$30.00.

K. E. Krause, Spokane, Washington, Nursery stock \$300.00.

J. B. Pilkington, Portland, Nursery stock \$75.00.

Shorty Beard, Forest Grove, Nursery stock \$8.00.

Dr. Via, Forest Grove, Nursery stock \$10.50.

Freeman & Munger, Perry, Okla., Peas \$95.00.

Loggers & Contractors Machinery Co., Portland, Combine parts \$12.00.

[fol. 83] Wheat allotment \$280.00. Disallowed since filing original petition.

R. F. McKnight, Orenco, combine parts \$186.00; paid since filing original petition.

Alvin Kolick, Orenco, prune seed \$17.00.

M. A. Chrisman, Portland, Nursery stock \$125.00.

Marylhurst College, Oswego, nursery stock, \$22.00.

Duly sworn to by Martin J. Bernards. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 84] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DISSOLVING RESTRAINING ORDER AGAINST J. W. CONNELL, SHERIFF OF WASHINGTON COUNTY, OREGON—Filed December 18, 1935

An order having been made and entered herein on October 3, 1935, upon the application of the above named bankrupts, temporarily restraining J. W. Connell, Sheriff of Washington County, Oregon, from executing a writ of assistance issued out of the Circuit Court of the State of Oregon for the Nineteenth Judicial District (Washington County) in a cause entitled, "M. R. Johnson and The United States National Bank of Portland (Oregon), plaintiffs vs. Martin J. Bernards, et al., defendants", requiring said sheriff to oust said bankrupts from the possession of certain real property described in the original and amended petition herein and requiring him to show cause why said order should not be made permanent, and said sheriff having appeared herein and filed his answer thereto the issue made thereby was, on October 11, 1935, duly argued and submitted to the court, said J. W. Connell, Sheriff, appearing by E. B. Tongue and A. D. Platt, of his attorneys of record, and said bankrupts appearing by J. P. Kavanaugh, of their attorneys of record, and, briefs having been filed, the matter was taken under advisement by the court and the court being now fully advised; and

[fol. 85] It Appearing Further to the Court that said real property was sold by said sheriff prior to the issuance of said restraining order to M. R. Johnson and The United States National Bank of Portland (Oregon) under and pursuant to an execution issued out of said Circuit Court, pursuant to a decree duly made and entered in said court, that said sale was duly confirmed by said Circuit Court and that said Circuit Court had jurisdiction over said suit and the parties thereto and the subject matter thereof, which jurisdiction it acquired prior to the commencement of any of the proceedings herein, and that by reason thereof the threatened acts of the Sheriff of Washington County (Oregon) would not constitute an interference with any property of the bankrupt as defined by the Acts of Congress.

It is hereby Considered and Ordered that said temporary restraining order, and the whole thereof, be, and it is, hereby vacated and set aside and that the application of said bankrupts for the continuance of said restraining order be, and it is, hereby denied.

Dated at Portland, Oregon, this 18th day of December, 1935.

James Alger Fee, United States District Judge.

[File endorsement omitted.]

[Vol. 86] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT
OF OREGON

B-19268

In the Matter of Martin J. Bernards and Lena Bernards,
Bankrupts

DECREE—Filed August 8, 1936

Now at this time this matter coming on for hearing upon the petition of the bankrupts filed herein on the 15th day of July, 1936, and the answer thereto and cross petition filed herein on behalf of M. R. Johnson and The United States National Bank of Portland (Oregon), a corporation, and the reply to said answer and petition, the above named bankrupts appearing in person and by Glenn B. Jack, their attorney, and the said M. R. Johnson and The United States National Bank of Portland (Oregon), a corporation, appearing in person and by E. B. Tongue, their attorney, and the Court having heard all the evidence introduced by and on behalf of the said bankrupts, and the said M. R. Johnson and The United States National Bank of Portland (Oregon), a corporation, and the admissions of the bankrupts, and the arguments of Counsel, and after having made an examination of the records herein, and from said petition, answer, reply and other evidence introduced herein on behalf of the respective parties, it appears to the Court:

I to XXI (Incl.) omitted.

That since the filing of said schedules by the above named bankrupts, said bankrupts have used and converted to their own use much of the property shown in said schedules and have received from a portion of said personal property an amount in excess of \$5000.00, and the remainder of said personal property is fast depreciating in value and will be lost or destroyed unless a trustee is appointed to take possession thereof, and that there is no reasonable hope of the rehabilitation of said bankrupts within the meaning of said section 75 of the Bankrupt Laws of the United States of America.

XXIII

That the said bankrupts have never at any time, pursuant to sub-section (s) of Section 75 of an act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", which sub-section was approved August 28, 1935, filed a petition in this court praying that all their property, wherever located, whether pledged, encumbered or unencumbered, be appraised and that their unencumbered exemptions, and unencumbered interest or equity in their exemptions, as prescribed by State law, be set aside to them, and that they be allowed to retain possession under the supervision and control of the court, or any part or parcel or all of the remainder of their property, including their encumbered exemptions, under the terms and conditions set forth in said section.

XXIV

That this court has not at any time designated and appointed [fol. 88] pointed appraisers who have appraised the property of said bankrupts, and the property of these bankrupts has never been appraised by any appraisers appointed by this court under said sub-section (s) of said Section 75.

XXV

That this court has never at any time, through a referee in bankruptcy or Conciliation Commissioner, issued an order setting aside to said bankrupts their unencumbered exemptions or their unencumbered interest or equity in their exemptions as prescribed by State law.

XXVI

That this court has not at any time, through any referee in bankruptcy, Conciliation Commissioner or otherwise, made any order that possession of the bankrupts property should be under the supervision and control of this Court, or that any part or parcel thereof, or all of the remainder of the bankrupts' property shall remain in the bankrupts as provided under said Section 75.

XXVII

That this court has not at any time, through a referee in bankruptcy or Conciliation Commissioner, or otherwise, made any order staying all judicial or official proceedings in any court, or under the direction of any official, against the bankrupts or any of their property for a period of three years, or any other time.

XXVIII

That this court has not at any time, through a referee in bankruptcy or Conciliation Commissioner, or otherwise, fixed a reasonable rental to be paid by said bankrupts for any of the property mentioned in said schedules.

[fol. 89]

XXIX

That this court has not at any time, through a referee in bankruptcy or Conciliation Commissioner or otherwise, made any order permitting the bankrupts to retain possession of their property or any part or parcel thereof in the custody or under the control of this court.

XXX

That no proceedings have at any time been instituted, and no orders of any kind or character have been made by this court, pursuant to said sub-section (s) of said section 75, as amended by the Act approved on August 28, 1935, except the order recalling the proceedings from Willard Marks and referring said proceedings to H. A. Kuratli, Conciliation Commissioner.

XXXI

That from the schedules of the bankrupts on file herein, the said bankrupts, aside from said Parcels Nos. 1, 2, 3, 4,

5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 own no interest in any farm or agricultural lands except an undivided one-eighth interest in the following described lands to wit:

Being that part of the Donation Land Claim of S. J. N. Beeks No. 79 in Township one North of Range three West of Willamette Meridian bounded and described as follows: Beginning at the northeast corner of said claim No. 79, running thence west on the north line of said claim 10.63 chains to the southeast corner of the Henry Black Donation Land Claim; thence south $75^{\circ} 30'$ West 24.12 chains; thence South $0^{\circ} 30'$ West on east line of a tract of land owned by Theo. Bernards 44.54 chains to a post on the north line of J. Butts Donation Land Claim; thence east on such north line 34.90 chains to a stone; thence North $0^{\circ} 40'$ west 50.86 chains to the place of beginning, containing 167.70 acres;

That the lands hereinabove last described is designated in the schedule of the bankrupts on file herein as Parcel No. 17 and that the title to said Parcel No. 17 is held by eight heirs of — Bernards in common; that the bankrupts [fol. 90] have not used or occupied said farm since the year 1930, and that said land last hereinabove described since 1930 has been rented to one Lepschat, brother-in-law of the bankrupt, Martin J. Bernards, and that at no time since 1930 has the said Martin J. Bernards received in cash any sum or amount whatsoever as rental from the said Lepschat; that said land last hereinabove described is subject to a mortgage executed by the said bankrupts to one F. J. Vanderzanden for the sum of \$1500.00 executed on December 3, 1932, upon his own undivided one-eighth interest therein.

XXXII

That the said bankrupts are not farmers within the meaning of sub-section (s) of Section 75 as amended and approved August 28, 1935.

XXXIII

That upon the 28th day of August, 1935, the said bankrupts, Martin J. Bernards and Lena Bernards, had only an equity of redemption in and to the lands described in said decree, a copy of which is hereinabove set forth, except tract No. 15.

XXXIV

That sub-section (s) of said Section 75 as amended and approved on August 28, 1935, so far as the same would apply herein, is unconstitutional and void.

XXXV

That no legal or valid offer of composition or extension has ever been made in good faith and in compliance with said Section 75 of the said Bankrupt Act.

It is therefore Ordered and Adjudged that this Court is not now nor has it had since the 29th day of June, 1935, [fol. 91] any jurisdiction of the real property set forth in said decree, a copy of which is hereinabove set forth.

It is further Ordered and Adjudged that the said bankrupts have no right, title or interest in or to any of the real property set forth in said decree except Tract No. 15.

It is further Ordered and Adjudged that no legal or valid offer of composition has ever been made by the bankrupts to their creditors.

It is further Ordered and Adjudged that said sub-section (s) of Section 75 of the Bankrupt Laws as amended and approved on August 28, 1935, has no application to the real property described in said decree hereinabove set forth.

It is further Ordered and Adjudged that said bankrupts are not farmers within the meaning of said sub-section (s) of said Section 75 of the Bankrupt Laws as amended and approved on August 28, 1935.

It is further Ordered, Adjudged and Decreed that the above named bankrupts are not entitled to the benefits of the provisions of sub-section (s) of said Section 75 of the Federal Bankrupt Law as amended and approved on August 28, 1935, and that said petition of bankrupts be and hereby is denied.

It is further Ordered, Adjudged and decree that a trustee be appointed of all the personal property of said bankrupts and that it be sold or otherwise disposed of for the purpose of liquidating the debts of said bankrupts.

Dated this 8th day of August, 1936.

H. A. Kuratli, Conciliation Commissioner.

[File endorsement omitted.]

Filed October 1, 1936. G. H. Marsh, Clerk, by L. S. Rogers, Deputy.

[fol. 92] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER APPOINTING TRUSTEE—Filed August 29, 1936

At Hillsboro, Oregon, in said District, on the 29th day of August, 1936, before me, H. A. Kuratli, Conciliation Commissioner in Bankruptcy, a meeting of the creditors of the above named bankrupts having this day been held in the County Court House in the City of Hillsboro, County of Washington, State of Oregon, pursuant to a notice duly and legally given and served upon each and all of the creditors of the above named bankrupts shown in their said schedule, and it appearing that there are some assets available to the creditors of the above named bankrupts and that Joseph Loomis has been elected trustee of the estate of the above named bankrupts by the creditors of the above named bankrupts on this date,

Now Therefore, It Is Hereby Ordered that I do hereby appoint Joseph Loomis of Forest Grove, Oregon, in the County of Washington, State of Oregon, as trustee of the estate of the above named bankrupts, and that the bond of said trustee be and hereby is affixed in the sum of one thousand and no/100 (\$1000.00) dollars.

Dated this 29th day of August, 1936.

H. A. Kuratli, Conciliation Commissioner in Bankruptcy.

[File endorsement omitted.]

Filed October 1, 1936. G. H. Marsh, Clerk.

[fol. 93] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER APPROVING TRUSTEE'S BOND—Filed September 3, 1936

It appearing to the Court that Joseph M. Loomis of Forest Grove, Oregon, in said District of Oregon, has been duly appointed Trustee of the Estate of the above named Bankrupts, and has given a bond, with Commercial Casualty Insurance Company, a corporation, as Surety, for the

faithful performance of his official duties in the amount fixed by the order of this Court, to-wit: in the sum of \$1,000.00;

It Is Now Ordered that said bond be and the same hereby is approved.

Dated this 3rd day of September, 1936.

H. A. Kuratli, Conciliation Commissioner and Referee for the County of Washington.

[File endorsement omitted.]

Filed October 1, 1936. G. H. Marsh, Clerk, by L. S. Rogers, Deputy.

[fol. 94] IN UNITED STATES DISTRICT COURT

[Title omitted]

CERTIFICATE ON REVIEW—Filed October 1, 1936

To the Honorable John H. McNary and James Alger Fee, Judges of the above entitled Court:

I, H. A. Kuratli, Conciliation Commissioner and Referee in Bankruptcy, to whom was referred and who is now in charge of the proceedings in the above entitled cause, for the purpose of review of a portion of said proceedings, Do Hereby Certify:

That in the course of said proceedings herein, and based upon the petition, answer and reply hereinafter set forth, and upon the evidence taken and heard on behalf of said bankrupts, and their admissions in open Court, and the testimony taken on behalf of the petitioners, M. R. Johnson and The United States National Bank of Portland (Oregon), an order was made and entered on the 8th day of August, 1936, adjudging Martin J. Bernards and Lena Bernards, the above named bankrupts, are neither farmers or stock raisers within the embrace of the Act of Congress in relation to Bankruptcy, particularly subdivisions "R" and "S" of Section 203, Title 11 thereof, known as the second Frazier-Lemke Amendment, and are not entitled to [fol. 95] the benefits of said second Amendment, and adjudging that Martin J. Bernards and Lena Bernards are without any right, title or interest in or to the tracts of real property described in *in* schedule "B", numbered 1

to 16, inclusive, a copy of which order is hereto annexed, and that thereafter, towit: on the 29th day of August, 1936, at a meeting of the creditors of the bankrupts, upon notice duly given, the creditors of the above named bankrupts unanimously elected one Joseph M. Loomis to act as trustee of the estate of the above named bankrupts, and upon said date, towit: the 29th day of August, 1936, an order was made and entered in the above entitled matter wherein the appointment of the said Joseph M. Loomis as trustee was confirmed, and that thereafter, towit: on the 3rd day of September, 1936, an order was made by the undersigned in said matter approving the bond and undertaking of the said Joseph M. Loomis, as said trustee.

That no review has ever been taken from said order and decree made by the undersigned on August 8, 1936.

That thereafter, towit: on the 19th day of September, 1936, the said Martin J. Bernards and Lena Bernards, bankrupts, feeling aggrieved at said order dated August 29, 1936, confirming the appointment of Joseph M. Loomis as trustee, and feeling aggrieved at the order dated September 3, 1936, hereinabove set, approving the bonds of said trustee, filed an instrument denominated Notice of Appeal, attempting to appeal from said decision and orders dated, respectively, August 29, 1936 and September 3, 1936, which Notice of Appeal the undersigned Referee believes is insufficient to support a review of said orders by this Honorable [fol. 96] Court but which nevertheless is allowed.

I herewith transmit, for the information of the Court, the following documents and papers, upon which said order and decree of August 8, 1936, is based and founded, towit:

1. Petition filed by Martin J. Bernards and Lena Bernards directed to H. A. Kuratli, Conciliation Commissioner, and filed July 15, 1936.
2. Answer and cross petition of the petitioners, M. R. Johnson and The United States National Bank of Portland (Oregon), filed on July 24, 1936.
3. The reply of the bankrupts to the petition and answer of M. R. Johnson and The United States National Bank of Portland (Oregon), filed on August 8, 1936.
4. The order and decree of the undersigned dated August 8, 1936, and deciding the issues involved in said petition and answer and cross petition and reply hereinabove men-

tioned, and from which order no appeal or review has ever been taken.

That thereafter, to-wit: on the 29th day of August, 1936, after due notice thereof, at a meeting of the creditors of said bankrupts, said creditors unanimously elected one Joseph M. Loomis as trustee of the estate of the above named bankrupts, and that thereafter an order was made and entered on the 29th day of August, 1936, approving and confirming the election of the said Joseph M. Loomis as such trustee, and that thereafter the said Joseph M. Loomis filed his undertaking as such trustee, and on the 3rd day of September, 1936, this Court made and entered [fol. 97] an order approving said bond.

I transmit herewith, for the information of the Court, as a basis for the review, the following documents, instruments and papers, to-wit:

1. Order confirming the election of Joseph M. Loomis as trustee of the bankrupt estate of Martin J. Bernards and Lena Bernards dated August 29, 1936.

2. Qualifying bond of trustee, Joseph M. Loomis.

3. Order approving and confirming the bond of the said Joseph M. Loomis as trustee dated September 3, 1936.

4. Notice of Appeal filed by the said Martin J. Bernards and Lena Bernards on September 19, 1936, appealing from the order appointing the trustee dated August 29, 1936, and from the order approving the bond of the trustee dated September 3, 1936, and which Notice of Appeal was directed to H. A. Kuratli, Conciliator in Bankruptcy, Joseph M. Loomis, Trustee in Bankruptcy, and to Bagley & Hare, attorneys for said trustee.

5. Records of Creditors' Meeting held on August 29, 1936.

That the question for review is whether or not the unanimous election of Joseph M. Loomis as trustee by the creditors of said bankrupts and the confirmation thereof by your Referee, and the approval of the undertaking of said Referee are valid.

Wherefore, your Referee certifies said questions as aforesaid for the determination by the Court.

Respectfully submitted, H. A. Kuratli, Conciliation Commissioner in Bankruptcy.

[fol. 98] Notice of the filing of the foregoing certificate mailed on Oct. 2, 1936, to Platt, Platt & Black, E. B. Tongue, Glenn R. Jack, and George R. Bagley.

G. H. Marsh, Clerk, by L. S. Rogers, deputy

[File endorsement omitted.]

[fol. 99] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER APPOINTING APPRAISERS

It is Ordered that E. A. Griffith, W. C. Christensen and Carl Bechen, of Washington County, Oregon, three disinterested persons, be and they are hereby appointed appraisers to appraise the real and personal property belonging to the Estate of said Bankrupts set out in the Schedules now on file in this Court and report their appraisal to the Court, said appraisal to be made as soon as may be and the appraisers to be duly sworn.

Witness my hand on this 25th day of September, A. D. 1936.

H. A. Kuratli, Conciliation Commissioner of Washington County and Referee in Bankruptcy.

COUNTY OF WASHINGTON,

District of Oregon, ss:

Personally appeared the within named E. A. Griffith, W. C. Christensen and Carl Bechen and severally made oath that they will fully and fairly appraise the aforesaid real and personal property according to their best skill and judgment.

E. A. Griffith, W. C. Christensen, Carl Bechen.

[fol. 100] Subscribed and sworn to before me on this 28th day of October, A. D., 1936. H. A. Kuratli, Conciliation Commissioner of Washington County and Referee in Bankruptcy.

APPRAISEMENT

We, the undersigned, having been notified that we were appointed to examine and appraise the real and personal

property of the Bankrupt Estate of Martin J. Bernards and Lena Bernards, Bankrupts, have attended to the duties assigned to us and after a strict examination and careful inquiry, we do estimate and appraise the same as follows:

Description of Property Real Property:	Appraised Value
<p>Tracts 1 to 16, inclusive, described in Schedule "B" of the Amended Petition of the Bankrupts filed in this cause, have been lost to this Estate by reason of the foreclosure of the mortgages existing thereon at the time of the institution of this bankrupt proceeding and sale of said tracts of land under decree of foreclosure entered in the Circuit Court of the State of Oregon for Washington County; that the time for redemption thereof has expired and conveyances have been made by the Sheriff of Washington County, Oregon, to the respective purchasers of said tracts of land at the sale thereof under said decrees.</p> <p>An undivided one-eighth interest in the following described real property:</p> <p>Being that part of the donation land claim of S. J. N. Beeks No. 79 in Township One North [fol. 101] of Range Three West of Willamette Meridian, bounded and described as follows, to-wit: Beginning at the Northeast corner of said Claim No. 79, running thence West on the North line of said claim 10.63 chains to the Southeast corner of Henry Elack donation land claim; thence South $75^{\circ} 30'$ West 24.12 chains; thence South $0^{\circ} 30'$ West on East line of a tract of land owned by Theo. Bernards 44.54 chains to a post on the North line of J. Butts donation land claim; thence East on such North line 34.90 chains to a stone; thence North $0^{\circ} 40'$ West 50.86 chains to the place of beginning, containing 167.70 acres</p>	\$2,000.00
Personal Property:	
300 tons of Chopped Hay	\$1,200.00
110 tons Baled Straw	385.00
1 Black Mare	125.00

Personal Property—Continued:	Appraised Value
1 Black Gelding	150.00
1 Black Gelding	125.00
1 Holstein Cow	60.00
130 Lambs	312.50
160 Ewes	271.25
1 22-36 International Tractor	400.00
1 Big Six McCormick-Deering Mower	45.00
1 Big Six McCormick-Deering Mower	45.00
1 12-foot McCormick-Deering Rake	35.00
1 4-bottom 16-inch John Deere Tractor Plow	10.00
1 3-bottom 14-inch John Deere Tractor Plow	20.00
1 Papee 3-row Hay Cutter	100.00
1 28-foot Corrugated Roller	100.00
1 22-foot Spring Tooth Harrow	50.00
1 33-foot Six Section Peg Tooth Harrow	25.00
[fol. 102] 1 10-foot Van Brunt Drill	75.00
1 7-foot Wooden Roller	5.00
1 8-foot 22-inch Tandem Covercrop Disc	70.00
1 8-foot 22-inch Tandem Covercrop Disc	70.00
1 10-foot 16-inch Tandem Tractor Disc	20.00
1 14-inch Walking Plow	1.00
1 16-inch Walking Plow	1.00
1 16-foot Land Plaster Seeder	25.00
1 Hay Tedder	15.00
1 3-horse McCormick-Deering Cultivator, 2-row	40.00
1 2-horse Cultivator	5.00
1 2-horse Cultivator	5.00
1 1-horse Cultivator	.50
1 1-horse Cultivator	.50
1 Clipper Power Fanning Mill	20.00
1 Hand Fanning Mill	2.50
1 Set of Harness	25.00
1 Set of Harness	15.00
1 Wagon: "Steel" (written in lead pencil)	15.00
1 Wagon: "Wood" " " " "	2.00
2 Hay Racks	2.50
1 3½ Bain Wagon and Box	50.00
1 5-ton White Truck, 1925 Model	50.00
1 5-ton White Truck, 1925 Model	50.00
1 3½-ton White Truck, 1921 Model, motor missing	20.00

Personal Property—Continued:

	Appraised Value
1 3-ton Packard Truck, 1918-19 Model	50.00
1 3-ton Packard Truck, 1918-19 Model	50.00
1 1928 Buick Sedan Automobile	5.00
1 3300-gallon Gasoline Tank	35.00
[fol. 103] 1 5000-gallon Gasoline Tank	40.00
1 Water Pump with motor attached	Missing
1 "Howe" (written in lead pencil) Scales, 3 by 4 platform	5.00
20 Cords Wood in basement of house	50.00
20 40-rod spools Fencing	80.00
1 Fodder Chopper	2.00
1 New Fertilizer Spreader, purchased on conditional sales contract from John Deere Plow Co.	140.00
1 Used Fertilizer Spreader	5.00

The 85-acre crop of hairy vetch; the 50 acres of oats and Austrian peas; the 100 acres of Victory oats; the 90 acres of Barley harvested and the 2 tons of Vetch mentioned in Subdivision 6 of Schedule "B" of the amended petition of the Bankrupts, heretofore filed in this cause, do not seem to be in existence and have not been appraised.

The household goods and furniture described in Subdivision 9 of Schedule "B" has been taken by the owner thereof who had sold the same to the Bankrupts upon an installment sales contract.

The unpaid accounts listed in Subdivision 10 of Schedule "B" were not presented to us for appraisement.

Total Appraised Value

\$6,505.75

In Witness Whereof, We have hereunto set our hands at Hillsboro, Oregon, this 28th day of October, 1936.

E. A. Griffith, W. C. Christensen, Carl Bechen, Appraisers. Filed Oct. 29, 1936. H. A. Kuratli, Con. Com. Filed July 29, 1938, G. H. Marsh, Clerk, by L. S. Rogers, Deputy.

[fol. 104] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OF EXEMPTION—Filed January 14, 1937

At Hillsboro in said District, on this 14th day of January, 1937, came on for hearing the report of the Trustee advising of the setting out of the personal exemptions of the bankrupts under the laws of the State of Oregon: and

It appearing that the bankrupts selected and that the said Trustee has set out the following items, namely:

1 Black Mare, appraised at	\$125.00
1 Black Gelding (small one), appraised at	125.00
1 4-bottom 16-inch John Deere Tractor plow, appraised at	10.00
1 14-inch walking plow, appraised at	1.00
1 set of harness, appraised at	25.00
1 farm wagon, home made, appraised at	2.00
1 5-ton White Truck, 1925 model, in Portland in storage, appraised at	50.00
1 5-ton White Truck, 1925 model, on the farm, appraised at	50.00
1 Fairbanks platform scale, appraised at	5.00
1 Fodder chopper, appraised at	2.00
1 Used Fertilizer Spreader, appraised at	5.00
1 Holstein Cow, appraised at	60.00
10 Sheep, to be selected from the flock, appraised at	17.00
5 Tons of Chopped Hay, to feed the horses 60 days, and the sheep and cow 90 days, appraised at	20.00
Total Set Out to the Bankrupts	<u>\$497.00</u>

as exempt under the laws of the State of Oregon:

[fol. 105] It Is Now Ordered that said selection and said allowance and setting out by the Trustee of said items of property be and hereby are approved and the said items are withdrawn from the assets of the said bankrupts, and said Trustee is authorized to deliver the same to the said bankrupts.

H. A. Kuratli, Conciliation Commissioner and Referee in Bankruptcy.

Dated this 14th day of January, 1937.

[File endorsement omitted.]

Filed July 29, 1938. G. H. Marsh, Clerk, by L. S. Rogers, Deputy.

[fol. 106] IN UNITED STATES DISTRICT COURT

[Title omitted]

SUPPLEMENTAL APPRAISEMENT—Filed January 21, 1937

We, the undersigned appraisers of the bankrupt estate of Martin J. Bernards and Lena Bernards, heretofore appointed to examine and appraise the real and personal property of said bankrupt estate and who have heretofore filed herein such an appraisement of the items of property at said time in the possession of the Trustee, do now estimate, value and appraise the following personal property not then exhibited to us and not then in the possession of the Trustee in Bankruptcy and since said former appraisement reduced to possession by said Trustee, namely:

Description of Property	Appraised at
1 Blacksmith's Anvil	\$10.00
100 Steel Fence Posts @ \$.25 each	25.00
Odds and ends of iron and steel, known as scrap-iron	1.00
1 15-30 International Tractor, located in the City of Portland, Oregon, in the possession of Ike Mullen, subject to possessory lien of said Ike Mullen in the sum of \$115.25; equity of estate	250.00
1 Sheep-Shearing Outfit, now in the possession of Lucy Duyck	20.00
1 9-foot Corrugated Roller	59.00
[fol. 107] 1 Large Roller Hitch	1.00
1 Iron Roller	60.00
1 Buck Sheep	4.25
Total Supplemental Appraisement	\$430.25

In Witness Whereof we have hereunto set our hands and seals at Hillsboro, Oregon, this 21st day of January, 1937.

William C. Christensen, Carl G. Bechen, E. A. Griffith, Appraisers.

[File endorsement omitted.]

Filed September 2, 1938. G. H. Marsh, Clerk, by L. S. Rogers, Deputy.

[fol. 108] IN UNITED STATES DISTRICT COURT

[Title omitted]

FINDINGS OF FACT—Filed May 10, 1938

There coming on to be heard before the Honorable James Aiger Fee, judge of the above entitled court:

1. The petition of said bankrupts filed herein on January 15, 1937; the answer thereto filed by Catherine H. Collins, by M. R. Johnson and the United States National Bank of Portland (Oregon) and by Joseph M. Loomis, trustee; and the bankrupts' reply to said answers.

2. The motion of said bankrupts filed herein on April 13, 1938.

And the bankrupts appearing by their attorney W. E. Richardson, Catherine H. Collins appearing by her attorney William L. Brewster, M. R. Johnson and the United States National Bank of Portland (Oregon) appearing by their attorneys Arthur D. Platt and E. B. Tongue, and Joseph M. Loomis, trustee, appearing by his attorney George R. Bagley.

And W. E. Richardson attorney for the bankrupts having admitted the allegations contained in paragraphs I and IV of said answer of Catherine H. Collins.

And said attorney for the bankrupts having further admitted the allegations contained in the answer of said M. R. [fol. 109] Johnson and the United States National Bank of Portland (Oregon) contained in paragraphs II-XI inclusive and that part of paragraph XIII from its beginning to the words, "expired June 29, 1936" on line 29 of page 8.

And said attorney for the bankrupts having further admitted the allegations contained in the following portions of the answer of Joseph M. Loomis, trustee, to-wit:

In paragraph VI beginning with the words, "that at a meeting" on line 18 of page 5 and extending to the end of the paragraph; all of paragraphs VII, VIII and IX.

And thereupon the statements and arguments of counsel having been heard, and all of the above named matters having been duly considered, the Court makes the following Findings of Fact and Conclusions of Law.

Findings of Fact

I

That on the 19th day of December, 1934, Martin J. Bernards and Lena Bernards were, by order and judgment of this court, duly adjudicated bankrupts, and said bankrupts sought relief under the provisions of the "Frazier-Lenke" amendment, known as subdivision "S", Section 75 of the Act of Congress, known as the Bankruptcy Act.

II

That on September 30th, 1935, by order of this court duly made and entered, said cause was referred to H. A. Kuratli, Conciliation Commissioner of Washington County, that [fol. 110] thereupon said bankrupts filed a petition praying for an order of said Commissioner granting to said bankrupts immediate possession and control of all of the property, real and personal, enumerated and listed in the schedules attached to the amended debtor's petition, filed by them in this court and cause. That M. R. Johnson and United States National Bank of Portland, Oregon, appearing in said cause and answered said petition and set forth in said answer their mortgage upon the real property described in said schedules, the foreclosure thereof, all proceedings in the Circuit Court of the State of Oregon for Washington County, and the sale of said premises by the Sheriff of Washington County pursuant to decree of said State Court to the said M. R. Johnson and United States National Bank. That upon due and legal proceedings had before said Commissioner upon said petition and answer, in which the said bankrupts appeared in person and by counsel, said Commissioner, upon said issues so presented, the said Commissioner having jurisdiction so to do, on the 8th day of August, 1936, entered the order and judgment following, namely:

"It Is Therefore Ordered and Adjudged that the said bankrupts have no right, title or interest in or to any of the real property set forth in said decree except Tract No. 15.

"It Is Further Ordered and Adjudged that no legal or valid offer of composition has ever been made by the bankrupts to their creditors.

[fol. 111] "It is Further Ordered and Adjudged that said sub-section (s) of Section 75 of the Bankrupt Laws as

amended and approved on August 28, 1935, has no application to the real property described in said decree hereinabove set forth.

"It is Further Ordered and Adjudged that said bankrupts are not farmers within the meaning of said sub-section (s) of said Section 75 of the Bankrupt Laws as amended and approved on August 28, 1935.

"It is Further Ordered, Adjudged and Decreed that the above named bankrupts are not entitled to the benefits of the provisions of sub-section (s) of said section 75 of the Federal Bankrupt Law as amended and approved on August 28, 1935, and that said petition of bankrupts be and hereby is denied.

"It is Further Ordered, Adjudged and Decreed that a trustee be appointed of all the personal property of said bankrupts and that it be sold or otherwise disposed of for the purpose of liquidating the debts of said bankrupts."

That no petition for review of said order was ever filed and no review thereof has ever been had and said order and judgment of said Commissioner aforesaid has become final.

III

That during the foreclosure of the mortgage upon the land described in the schedules attached to the amended petition of the bankrupts filed December 19th, 1934, the bankrupts herein named filed in this court and cause a petition seeking an order restraining the Sheriff of Washington County from executing a writ of assistance ousting the said bankrupts from the possession of the lands described in said foreclosure proceedings and upon said application ex parte a temporary order restraining said Sheriff from the execution of said writ of assistance was made and entered in this cause. That after full hearing upon said petition in which the bankrupts appeared by Counsel, this Court, on December 18th, 1935, duly made, rendered and entered an order and judgment as follows:

"It Appearing Further to the Court That said real property was sold by said sheriff prior to the issuance of said restraining order to M. R. Johnson and The United States National Bank of Portland (Oregon) under and pursuant to an execution issued out of said Circuit Court, pursuant to a decree duly made and entered in said court, that said

sale was duly confirmed by said Circuit Court and that said Circuit Court had jurisdiction ~~over~~ said suit and the parties thereto and the subject matter thereof, which jurisdiction it acquired prior to the commencement of any of the proceedings herein, and that by reason thereof the threatened acts of the Sheriff of Washington County (Oregon) would not constitute an interference with any property of the bankrupt as defined by the Acts of Congress.

"It is Hereby Considered and Ordered that said temporary restraining order, and the whole thereof, be, and it is, hereby vacated and set aside and that the application of said bankrupts for the continuance of said restraining order be, and it is, hereby denied."

That no appeal from said judgment and order has ever been taken or prosecuted by the bankrupts, and that the time for such appeal has long since expired and said order has become final.

IV

That on the 29th day of August, 1936, pursuant to written notice given to all creditors of said bankrupts by the Conciliation Commissioner a meeting of the creditors of said bankrupts was held at Hillsboro, Oregon, on said date, [fol. 113] whereat, on said day Joseph M. Loomis, by the majority vote in number of claimants who had presented their claims against said bankrupt estate and majority in amount of claims, was, by said creditors, duly elected trustee of said bankrupt estate, and on September 3, 1936, said election aforesaid was, by order made and entered by the Commissioner, duly ratified, and by said order the bond of said trustee was fixed at the sum of \$1000.00. That thereafter said Joseph M. Loomis filed in this cause his bond as such trustee in the sum of \$1000.00 conditioned as by Law prescribed and on September 4th, 1936, the said bond, by order of said Commissioner was duly approved and said Joseph M. Loomis thereafter proceeded to administer the assets of said bankrupt estate and has continued so to do in the manner hereinafter more particularly set forth. That the bankrupts filed in said proceeding a notice of appeal and based thereon the said Conciliation Commissioner prepared and filed with the Clerk of this court a certificate of review of said orders of September 3rd and September 4th, aforesaid. That after due notice and hearing upon such

review, on December 14th, 1936, this Court duly made, rendered and entered the following order:

“Martin J. Bernards and Lena Bernards, the above-named bankrupts, having heretofore filed with H. A. Kuratli, Conciliation Commissioner for Washington County, Oregon, their petition for review in the form of an entitled “Notice of Appeal” from that certain order of said Conciliation Commissioner for Washington County, in the above entitled cause, dated August 22, 1936, and that certain order of said Conciliation Commissioner dated Sep-[fol. 114] tember 4, 1936, and said Conciliation Commissioner having transmitted said petition or notice to this court, together with his certificate thereon, and the court having considered the same and being fully advised,

“Now, Therefore, it is Considered and Ordered that the aforesaid orders of said Conciliation Commissioner be, and they are hereby affirmed, and said petition or notice be, and it is hereby, denied.”

That said bankrupts have not appealed from said order and judgment so entered, as aforesaid, and the time for appeal has long since expired and said judgment of this court has become final.

V

That on the 13th day of January, 1937, upon filing by the bankrupts of the petition now pending in this Court and to which this answer is now made, application was made to this court for an order restraining and enjoining Joseph M. Loomis, Trustee, from selling the personal property listed and enumerated in the schedules attached to the amended debtor's petition filed by the bankrupts on December 19th, and after an ex parte hearing thereon such temporary order of restraint was refused and denied by this court. That no appeal has been taken from such order denying said temporary order of restraint.

VI

That during all of the time after the election, confirmation and qualification of the Trustee in this cause and relying upon the orders and judgments of this court as authority therefor, said Trustee has proceeding with the ad-[fol. 115] ministration and disposal of the assets of said

estate in conformity with the general provisions of the Act of Congress relating to bankruptcy. That an inventory of all of the property of said bankrupts was filed and appraisal thereof was duly made by appraisers duly appointed by order of said Commissioner; that at a meeting of the creditors of said bankrupts, duly called and held, upon notice, the sale of the property of said bankrupt estate was authorized, and pursuant to such authorization and the orders of said Commissioner duly made and entered, the personal property, except such portions thereof set out to the bankrupts as exempt under the laws of the State of Oregon, claimed, designated and selected and received by the bankrupts, was sold at public auction or private sale as directed by said orders of said Commissioner and the Trustee has received from the sale thereof the sum of \$7,835.06.

VII

That the Trustee, upon order of the Commissioner, has paid out for expenses of securing possession, caring for, preparing for sale, and selling said property, and other expenses of administration in the sum of \$1512.67. That there will be further expenses of administration, the amount whereof at this time cannot be definitely stated, including compensation of Trustee and compensation of attorneys for the Trustee, in addition to the partial payment of attorneys' fees heretofore mentioned.

[fol.116]

VIII

That there has been presented and allowed as preferred claims against said bankrupt estate and entitled to payment in full, claims amounting to \$960.21.

IX

That the general claims have been presented and allowed in the sum of \$32,032.40.

X

That the real property described in the schedules attached to the amended debtors petition, filed in this cause December 19th, 1934, which was then subject to the mortgages mentioned and specified in said schedules has been sold upon foreclosure decrees and deeds therefor executed

by the Sheriff of Washington County to purchasers at the sale thereof, except the undivided one-eighth interest of the bankrupt in and to the land described in said schedules designated as the seventeenth tract, and the Trustee has not at any time had possession or control of any of the lands described in said schedules. That said undivided one-eighth interest in said tract, specified in said schedules as Tract No. 17, is subject to a mortgage in the sum of \$1500.00 and accrued interest in favor of J. M. Vanderzander, and said mortgage is a valid mortgage and said J. M. Vanderzanden has sought permission to foreclose the same. That the amount due upon said mortgage is largely in excess of the fair market value of said undivided [fol. 117] one-eighth interest of the said bankrupts, and in fact said bankrupt estate has no substantial interest in said land that would justify the Trustee in incurring expense in the sale thereof.

XI

That the said bankrupts have made no attempt to comply with the conditions required of them by the "Frazier-Lemke" amendment to the Acts of Congress in relation to bankruptcy, necessary to be complied with by them in order to obtain the right and privilege of a three years' stay of enforcement of the obligations owned and held by their creditors and possession of the real and personal property described in the schedules attached to their debtor's petition on file in this cause on a rental basis, as provided in subdivision (s) of Section 75 of the Bankruptcy Act.

XII

That the said Martin J. Bernards and Lena Bernards, Bankrupts, have never at any time submitted any proposal for a composition and extension which was an equitable and feasible plan for the liquidation of the claims of their secured creditors or other creditors which would result in the financial rehabilitation of the said bankrupts.

XIII

That the said Martin J. Bernards and Lena Bernards at the time of the filing of the debtor's petition, on December 19th, 1934, and at all times thereafter, have been in

[fol. 118] truth and in fact beyond all hope of financial rehabilitation and the only effect of further proceedings and delays on their behalf in this bankruptcy proceeding will be to postpone the inevitable liquidation of their financial affairs without benefit to them and resulting in great hardship to the creditors, preferred and common, of the said bankrupts.

XIV

On account of the findings aforesaid, and by reason of other matters appearing in the record and files in this cause and which, by reference, are made a part of this answer, the bankrupts have shown and established that there has at no time since the inception of these bankruptcy proceedings, been any possibility of financial rehabilitation of the bankrupts; that they have been barred and precluded from the relief conditionally granted by sub-division (s) of Section 75 of the Bankruptcy Act.

XV

On or about April 4, 1930, said bankrupts, being then indebted to the aforesaid M. R. Johnson in the sum of \$70,000.00, made, executed and delivered to him their promissory note for said sum of \$70,000.00 due on or before four months after date, with 8% interest from date until paid, and contemporaneously therewith and to secure the payment thereof made, executed and delivered to said M. R. Johnson their certain mortgage, wherein and whereby they mortgaged to said M. R. Johnson all that certain real property in Washington County, Oregon, described in the inventory and schedules of said bankrupts herein as Parcels 1 to 15, inclusive, and described as follows: (specific descriptions omitted). Parcel 15 of said lands was, at the date of said mortgage, subject to a prior mortgage held by one Catherine H. Collins, and a portion of Parcels 1 to 15, inclusive, described in the schedules herein as Parcel 16 thereof was subsequently, and on or about February 24, 1931, released by said M. R. Johnson from the aforesaid mortgage, and mortgaged by said bankrupts to the World War Veterans' State Aid Commission of Oregon, and a new mortgage covering said Parcel 16 but junior to said last mentioned mortgage was thereafter made, executed and delivered by said bankrupts to said M. R. Johnson.

XVI

Part of the money loaned by said M. R. Johnson to said bankrupts as aforesaid was borrowed by said M. R. Johnson from The United States National Bank of Portland (Oregon), and both of the aforesaid mortgages given by the bankrupts to said M. R. Johnson, and also the hereinafter mentioned bonds, were by said M. R. Johnson assigned to said bank in order to secure the aforesaid loan from said bank to said M. R. Johnson. Part of the money so loaned by said M. R. Johnson to said bankrupts was used by said [fol. 120] bankrupts to purchase certain waterworks extension bonds of the City of Orenco of the Tualatin Valley, a municipal corporation of the State of Oregon, numbered 6, 7, 8, 9, 10, 11, and 41, of the par value of \$1,000.00 each, except that \$400.00 had been paid on account of said bond #6, all with interest coupons numbered 18 to 30, inclusive, attached, the entire purchase price of said bonds being paid for out of said loan, and said bankrupts thereupon pledged said bonds with said M. R. Johnson as additional security for said loan.

XVII

Thereafter said mortgages to said M. R. Johnson and the pledge of said bonds became in default and, on the 6th day of April, 1934, said M. R. Johnson and The United States National Bank of Portland (Oregon) filed a suit in the Circuit Court of the State of Oregon, for Washington County, to foreclose said two mortgages and said pledge, and thereafter and on July 11, 1934, after trial of said suit, said Circuit Court made and entered a decree foreclosing said mortgages and said pledge and directing the property included therein to be sold as provided by law.

XVIII

Pursuant to said decree and to an execution issued thereon, the aforesaid real property was, on June 29, 1935, sold to said M. R. Johnson and The United States National Bank of Portland (Oregon) for the sum of \$65,000.00 and [fol. 121] the aforesaid bonds were sold to said purchasers for \$2,541.40. Objections were filed to the confirmation of sale by said bankrupts but, after hearing said objections, said Circuit Court confirmed and approved said sale, and

said M. R. Johnson and The United States National Bank of Portland (Oregon) have ever since been entitled to the exclusive possession of all said real property, subject only to the rights of the aforesaid Catherine H. Collins in and to said Parcel 15.

XIX

Thereafter, and more than a year after the aforesaid sheriff's sale, said sheriff issued his sheriff's deed of said real property to said M. R. Johnson and The United States National Bank of Portland (Oregon), and said deed was duly recorded as provided by law.

XX

Martin J. Bernards, one of the above-named bankrupts, has from time to time interfered with the use of said real property by said M. R. Johnson by threats of legal action and bodily harm against persons dealing with and employed by said M. R. Johnson, and the continued pendency of this litigation has rendered it difficult or impossible for said M. R. Johnson to make a sale of any of said real property.

XXI

On October 31, 1929, said bankrupts, Martin J. Bernards and Lena Bernards, his wife, executed to Catherine H. [fol. 122] Collins a promissory note and a mortgage to secure the same on the real property situated in Washington County, Oregon, known in these bankruptcy proceedings as Parcel 15 and more particularly described in Finding of Fact XV.

On April 12, 1933, on account of defaults in the payment of said mortgage, said Catherine H. Collins commenced a suit to foreclose the same against said bankrupts and others. On July 9, 1935 a decree of foreclosure was made and entered, and on August 26, 1935, a sale of said real property in said foreclosure suit was made to Catherine H. Collins for the sum of \$10,669.35, and thereupon said Catherine H. Collins went into and has continued to be in possession of said land. On September 16, 1935, said sale was confirmed, and on September 10, 1936, a sheriff's deed on said foreclosure sale was executed to Catherine H. Collins and was thereafter duly recorded.

Recently and since she has obtained the sheriff's deed above mentioned, said Catherine H. Collins has attempted

to sell said land and had a buyer ready, able and willing to purchase for the sum of \$6400.00 subject to the payment of broker's commission and the unpaid taxes from 1931 to 1934 inclusive, but said sale fell through because of this proceeding in bankruptcy.

XXII

By reason of the foregoing findings and of other matters appearing in the records and files in the above entitled matter and which by reference are made a part of these [fol. 123] findings, the said Catherine H. Collins was from the date of sale on the foreclosure of said mortgage, August 26, 1935, a secured creditor of said bankrupts, and thereafter and since August 26, 1935, she has been and now is the sole and exclusive owner of the land described in said mortgage subject only to the statutory right of redemption which expired on August 26, 1936, but the title to said land in Catherine H. Collins is clouded by bankrupts' said petition filed January 15, 1937, and by their threats to interpose other proceedings as long as their bankruptcy is pending.

(Then follow Conclusions of Law which are repeated in Decree.)

Dated this 10th day of May, 1938.

James Alger Fee, District Judge.

[File endorsement omitted.]

[fol. 124] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER NUNC PRO TUNC—Filed Aug. 31, 1938 as of Feb. 18, 1935

This cause having come on to be heard upon the application of M. R. Johnson and The United States National Bank of Portland (Oregon), by A. D. Platt of their attorneys of record, for the entry of an order nunc pro tunc as of February 18, 1935, and

It Appearing to the Court from the affidavit of said A. D. Platt, attached to said application, and from the notes of the clerk of this court made at the time, and it being also

within the recollection and knowledge of the judge of this court, that an order was duly made on February 18, 1935 vacating a restraining order made and entered herein on August 10, 1934 and denying the petition theretofore filed by said M. R. Johnson and The United States National Bank of Portland (Oregon) except as to the vacation of said restraining order, and

It Further Appearing to the Court that said order was erroneously omitted from the record herein,

Now, Therefore, It Is Ordered that said order be entered of record as of February 18, 1935, now for then, as follows:

This cause heretofore came on for hearing upon the petition of M. R. Johnson and The United States National Bank of Portland (Oregon), praying for an order of this court [fol. 125] authorizing and permitting the petitioners and the Sheriff of Washington County, Oregon, to proceed with the execution sale pursuant to a foreclosure decree rendered in said court in the usual course, as provided by the laws and practice of the State of Oregon, without further stay of such proceedings by or under the authority of this court, and for such other and further relief as may appear to be equitable and just; and the court heard the arguments of counsel and considered their briefs and is now fully advised in the premises, and

It Appearing to the Court that this is a proceeding under Section 75 of the Bankruptcy Act, subdivisions (a) to (r) inclusive, and that said section is self-executing and provides a stay of execution in the state courts, and that the restraining order heretofore made and entered in this cause is superfluous.

Be It Therefore Ordered:

1. That said petition, in so far only as it seeks to vacate the restraining order heretofore made and entered in this cause, be and the same is hereby allowed;

2. That said petition, in so far as it seeks relief herein other than the vacation of said restraining order, be and the same is hereby in all things denied.

Dated at Portland, Oregon, this 31st day of August, 1935.

James Alger Fee, Judge of the above entitled court.

[File endorsement omitted.]

[fol. 126] IN UNITED STATES DISTRICT COURT

[Title omitted]

COUNTERPRAECIPE OF APPELLEES—Filed Sept. 2, 1938

To the clerk of the above entitled court :

You are hereby requested, pursuant to the provisions of equity rule 75 and of the rules of practice of the United States Circuit Court of Appeals for the Ninth Circuit, to incorporate into the transcript of record on the appeal herein, in addition to the portions of the record indicated by appellants herein by their praecipe to be included in the transcript of record herein, the following :

- (1) order of the court dated December 18, 1935, dissolving restraining order entered October 3, 1935;
- (2) order of conciliation commissioner, dated August 8, 1936, omitting paragraphs I to XXI;
- (3) order of conciliation commissioner dated August 29, 1936;
- (4) order of conciliation commissioner dated September 3, 1936;
- (5) certificate of conciliation commissioner on review, dated October 1, 1936;
- (6) appraisalment dated October 29, 1936;
- (7) order of exemption dated January 14, 1937;
- (8) supplemental appraisalment dated January 21, 1937;
- (9) findings of fact and conclusions of law, dated on or about May 10, 1938;
- (10) order entered on or about August 31, 1938 nunc pro tunc as of February 18, 1935.

Dated at Portland, Oregon, this 1st day of September, 1938.

George R. Bagley, Wm. L. Brewster, E. B. Tongue
and Platt & Black, Attorneys for Appellees.

[fol. 127] RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
District of Oregon, ss :

I hereby certify and return that I served the annexed Counterpraecipe of Appellees on the therein-named Mar-

tin J. Bernards, at his residence 1 mile Southwest of Beaverton, Oregon, at 7.25 P. M. by handing to and leaving a true and correct copy thereof with Martin J. Bernards personally at 1 Mile S. W. Beaverton, Ore in said District on the 1st day of Sept., A. D. 1938.

J. T. Summerville, U. S. Marshal, by Martin Lavelle,
Deputy.

[fol. 128] RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
District of Oregon, ss:

I hereby certify and return that I served the annexed Counterpraecipe of Appellees on the therein-named Lena Bernards, at her residence 1 Mile Southwest of Beaverton, Oregon at 7.25 P. M. by handing to and leaving a true and correct copy thereof with Lena Bernards personally at 1 Mile S. W. of Beaverton, Oregon, in said District on the 1st day of Sept., A. D. 1938.

J. T. Summerville, U. S. Marshal, by Martin Lavelle,
Deputy.

[fol. 129] Clerk's Certificate to foregoing transcript
omitted in printing.

[fol. 130] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION—Filed January 15, 1937

To the Honorable James Alger Fee, Judge of Said Court:

Your petitioners, Martin J. Bernards and Lena Bernards, the above named bankrupts, respectfully represent:

I

The petitioners hereby refer to all the records and files in said matter and by such reference hereby make the same a part of this petition, but for the convenience of the court and of the parties interested in said matter the petitioners

herein summarize and set forth the salient features of said records and files.

II

On the 10th day of August, 1934, the petitioners filed a petition in bankruptcy under Section 75 of the Bankruptcy Act as amended, claiming to be farmers and to be entitled to the benefits of the Act as such. At the same time the bankrupts filed their schedules in bankruptcy showing ownership and possession by them of a large amount of real and personal property. On the same date the petitioners prayed for an order restraining J. W. Connell, sheriff of [fol. 131] Washington County, Oregon, from proceeding with the sale of the real property described in the schedules under a decree theretofore entered in the Circuit Court of the State of Oregon for the County of Washington, and on that date a restraining order was issued accordingly by this court.

On the same date the matter of a composition and extension under the Act was referred to A. W. Hoffman as conciliation commissioner. In accordance with the proposal of the bankrupts for a composition and extension a hearing was had before said commissioner on the 10th day of September, 1934, regarding which the following is found in the report of said commissioner filed in the office of the clerk of this court on September 13, 1934². Referring to the date of the meeting of the creditors to consider said proposal it is said:

"at which time the debtor appeared and filed his application, but did not have the written consent of the majority in number and the majority in amount of his creditors. In fact, none of the creditors filed a written consent to the debtors' composition and extension proposal."

On October 27, 1934, the petitioners filed a petition praying that the matter of their proposal be again referred to commissioner Hoffman and this petition was granted on October 29, 1934, by this court. On December 15, 1934, the commissioner reported that a meeting had been held on December 4, 1934, and the debtors examined and that the majority creditor, Mr. Johnson, verbally rejected the proposal. The commissioner reported that his duties had been completed.

On December 19, 1934, an amended petition was filed by [fol. 132] the petitioners and on the same date they were adjudged bankrupt and the matter was referred to Willard L. Marks as commissioner.

III

On September 30, 1935, the proceedings were transferred to H. A. Kuratli as commissioner.

On October 3, 1935, a petition was filed by the bankrupts for an order restraining J. W. Connell, as sheriff, from dispossessing the bankrupts of their real property, which petition was granted on the same day and an order was issued accordingly until the further order of the court requiring the said sheriff to show cause on October 10, 1935, why the order should not be made permanent.

On October 11, 1935, an answer was filed by the sheriff setting forth the foreclosure proceedings in the Circuit Court in Washington County.

On October 15, 1935, an order was made by commissioner Kuratli (hereinafter referred to as the commissioner) requiring the bankrupts to appear before him on October 21, 1935.

On November 1, 1935, a petition was filed by the United States National Bank reciting the proceedings in the Washington County Court.

IV

On October 1, 1936, the commissioner submitted a report to this court, which included a petition of the bankrupts filed July 15, 1936, in the office of the commissioner praying for an order granting them immediate possession and control of their property under sub-division (s) of Section 75 [fol. 133] of the Bankruptcy Act, restraining the sheriff and M. R. Johnson and the United States National Bank and Catherine Collins from transferring the real property scheduled by the bankrupts, specific reference being made to the Frazer-Lemke Act. This report also included the petition of M. R. Johnson and the United States National Bank setting up the foreclosure proceedings in the Washington County Court, the order dissolving the restraining order entered against the sheriff. The commissioner finds that the bankrupts are not farmers, refers to the adjudication in bankruptcy of December 19, 1934, a pleading by the bankrupts alleging that they have an equity in the real

property in question of about \$80,000.00 and asking for the dismissal of the answer and petition of Johnson and the bank.

V

There is included in this report a decree by the commissioner dated August 8, 1936, in which there are recitals regarding a mortgage given by the bankrupts to M. R. Johnson covering the real property in question and securing a note for \$70,000.00 and the foreclosure proceedings of this mortgage commenced in the Washington County Court on April 6, 1934. It is stated that a decree foreclosing this mortgage and ordering the property sold was entered July 11, 1934, that on May 29, 1935, an execution was issued and on June 29, 1935, the property was sold to M. R. Johnson and the United States National Bank for \$65,075.00, which sale was on July 20, 1935, confirmed and on January 25, 1936, a writ of assistance was issued and on the same date the bankrupts were dispossessed by the sheriff; that at the time [fol. 134] of the sale the sheriff delivered a certificate to Johnson and the bank and on July 1, 1936, no redemption having been made, he delivered a deed to them. It is stated that Johnson and the bank are now the owners of the property and have been in possession thereof since June 29, 1935, except of tract No. 15 containing approximately 80 acres. As to this tract recitals are made concerning a mortgage to Catherine Collins, the foreclosure thereof and the sale of the same on August 26, 1935, to Catherine Collins for \$10,689.35.

VI

The commissioner further refers to the adjudication in bankruptcy and the offer of composition, that they failed to secure the consent of their creditors to their proposal, that they filed an amended petition on December 19, 1934, and on June 28, 1935, again applied to the court for an order referring their proposal for the third time to commissioner Hoffman, which application was denied.

VII

It is stated in this report that the bankrupts have never made application under sub-section (s) of Section 75, praying that their property be set apart to them, that the commissioner has never appointed appraisers under that section; that he has never issued any order to the effect that the

bankrupts should have possession of their property under the supervision of the court and has never made any order staying any judicial proceedings for a period of three years or any other time and that he has never fixed a reasonable rental to be paid by the bankrupts or entered any [fol. 135] order permitting the bankrupts to retain possession of their property, or any part thereof, in the custody or under the control of the court and that no proceedings have ever been instituted or any orders made under subdivision (s) of Section 75 of the Act except the order recalling the proceedings from Willard Marks and referring them to H. A. Kuratli. It is further recited that the bankrupts have no interest in the real property in question except one parcel containing 167.70 acres designated in the schedules of the bankrupts as parcel No. 17 and that title to this parcel is held by eight heirs of — Bernards in common; that the bankrupts have not used or occupied said farm since the year 1930 and since that time this tract No. 17 has been rented to one Lepschat, a brother-in-law of Martin J. Bernards and that this tract is subject to a mortgage to one F. J. Vanderzanden for \$1500.00 executed December 3, 1932, upon Martin J. Bernards undivided 1/8th interest.

VIII

At a hearing had before the commissioner on January 11, 1937, wherein Joseph Loomis, the alleged trustee appointed by said commissioner was present and represented by Honorable George R. Bagley as his counsel, and the bankrupt Martin J. Bernards was present and represented by B. G. Skulason as his counsel, the commissioner was asked by said counsel for the bankrupts whether or not the said commissioner in the proceedings had before him had proceeded under the Frazer-Lemke Act of August 28, 1935, [fol. 136] and the said commissioner replied that from the time the matter was referred to him he had proceeded under such Act. He was then asked by the same counsel whether or not the commissioner had appointed appraisers under said Act and, if so, whether an appraisal of the property of the bankrupts had been made, and the commissioner replied that such appraisers had been appointed and such appraisal had been made and produced from the files a document of that tenor and effect. The counsel now

representing your petitioners has not had time to examine the records in the office of said commissioner except as above stated.

IX

It is further recited in this report and set forth in said decree of August 8, 1936, that the bankrupts are not farmers as defined by said Act and that on August 28, 1935, they had only an equity of redemption in the lands described in the decree except said tract No. 15 and that the Act of August 28, 1935, is unconstitutional. It is adjudged by said decree that the commissioner has not now, nor since June 29, 1935, had any jurisdiction of the real property described in the decree; that the bankrupts have no title thereto except to tract No. 15, that no legal or valid offer of composition has ever been made by the bankrupts to their creditors; that sub-section (s) of Section 75 of the [fol. 137] Act approved August 28, 1935, has no application to the real property described in the decree, that the bankrupts are not farmers within the meaning of the law, that they are not entitled to the benefits of that section and that their petition for setting aside to them the property under the control of the court is denied. Finally it is adjudged that a trustee be appointed of all the personal property of the bankrupts and that said property be sold, or otherwise disposed of for the purpose of liquidating the debts of the bankrupts.

On August 29, 1936, an order was entered by the commissioner appointing Joseph Loomis trustee accordingly.

X

On September 19, 1936, the bankrupts filed a document designated as a notice of appeal from the order of August 29, and another order of September 3, 1936, both relating to the appointment of the trustee.

XI

There is on file a record of a meeting of the creditors on August 29, 1936, and a petition of the bankrupts filed November 30, 1936, in this court praying for an order setting aside to the bankrupts their exemptions and property as provided by the present Bankruptcy Act and this is supported by an affidavit by the petitioner Martin J. Bernards

to the effect that he made an application to the commissioner [fol. 138] for such an order and this was denied.

XII

On December 14, 1936, an order was entered by this court denying the appeal from the orders of August 29th and September 4, 1936, the language of the order being in part as follows:

“that the aforesaid orders of said conciliation commissioner be and they are hereby affirmed, and said petition or notice be, and it is hereby denied.”

Your petitioners further represent that at all times herein mentioned they were, and they still are, farmers as defined by said Bankruptcy Act and that all the proceedings taken by them in said matter from the beginning were taken in good faith with the intention and for the purpose of securing relief under the said Bankruptcy Act: that they have in all respects complied with said Act and that any and all recitals and decisions of the commissioner to the contrary are erroneous, unlawful and void and the same are hereby excepted to by your petitioners; that they were represented at the time of the filing of the petition and the amended petition by Honorable John P. Kavanaugh as their attorney and that he represented them until after the first Frazer-Lemke Act was declared unconstitutional, about which time Judge Kavanaugh became ill and was unable to represent them further. Thereupon the petitioners employed other [fol. 139] counsel who represented them until on or about the — day of —, 1936, when the said counsel withdrew from the case. Thereupon the petitioners attempted to secure the services of other counsel to represent them at the hearing of the appeal from said orders of August 29th and September 4, 1936, and understood and believed that such counsel had undertaken to represent them at such hearing. But through some misunderstanding and by reason of some inadvertence said counsel did not appear for the petitioners at such hearing. Neither did the petitioners appear at the hearing, believing that their presence was of no consequence and that their rights would be protected by said counsel. The petitioners engaged their present attorney, B. G. Skulason, only a few days ago and he has had very little time to acquaint himself with the record and the law of the case.

Your petitioners have been seriously handicapped ever since the withdrawal of Judge Kavanaugh from the case by their lack of money or means wherewith to compensate counsel and they have in fact not been able to pay their counsel anything for their services and are not now able to do so, all of their property having been taken away from them in the proceedings above recited, including their household furniture, and they having been left destitute with six young children to support. In taking the appeal from the said orders of August 29th and September 4, 1936, [fol. 140] it was the intention of the petitioners to seek a review of all the proceedings had before such commissioner, including the decree of August 8, 1936, and your petitioners were informed and understood and believed that the appeal so taken would bring before this court for review each and all of the orders and decrees of said commissioner and the failure to include said decree of August 8, 1936, in such appeal was caused by said misunderstanding by the petitioners of their rights and by some inadvertence on the part of counsel who then represented them.

As matters now stand, unless relief is afforded to your petitioners by this court their attempts to take advantage, as farmers, of said Act and save a portion at least of their property will have been entirely unavailing and the result will be instead of affording them relief within the spirit of this legislation, that they will lose their entire holdings which are extensive and valuable and will continue to be destitute as they are at present in view of the seizure of their property as above set forth.

XIV

An order has heretofore been entered by said commissioner authorizing the said alleged trustee to sell the personal property of your petitioners on the 14th day of January, 1937, at the hour of 10:00 o'clock A. M. On the 4th day of January, 1937, your petitioners filed with the commissioner a petition praying for relief under said sub-section (s) of Section 75, for the possession of all of their property and for an order revoking the order of the commissioner of August 8, 1936, for the removal of said alleged trustee and for an order restraining and enjoining him from proceeding with said sale, and for other relief, which petition came on for hearing before said commissioner on January 11, 1937, the petitioners being repre-

sented by B. G. Skulason as their attorney and the said alleged trustee appearing by Honorable George R. Bagley as his attorney. Thereupon a motion was filed by said alleged trustee for a dismissal of said petition upon the ground that all matters mentioned in said petition had been heretofore adjudicated adversely to the petitioners, and said motion was granted and an order entered accordingly on the last mentioned date. It is the intention of your petitioners to request a review of the last mentioned decision in due time under the rules of this court. But unless an order is entered immediately upon the filing of this petition restraining the said alleged trustee from proceeding with said sale he will proceed with the same in total disregard of the rights of your petitioners and to their irreparable damage.

XV

Your petitioners, therefore, pray that their failure to seek a review of the said decisions of the commissioner [fol. 142] within the time limited by the rules of this court be excused by reason of the mistakes and inadvertence above mentioned; that this court review the entire record and adjudge that these proceedings are governed by the Act of August 28, 1935, and have been so governed from the date when said Act went into effect, particularly in view of sub-division (5) of Section 6 of said Act amending said Section 75; that the aforesaid decisions of the commissioner, each and all of which are contrary to law and void and hereby excepted to, be reversed and your petitioners held to be farmers entitled to all the benefits of said Act, including their exemptions and right to possession of their property under the control of the court and that the commissioner be ordered to proceed accordingly; that this petition be considered by the court as exceptions to said decisions of the commissioner and to his said report with the same force and effect as if your petitioners had complied with the rules of the court relative to petitions for review or appeal from such decisions; that this court grant to the petitioners such other and further relief as they may be entitled to in the premises to the end that their rights and interests may be fully protected under said Bankruptcy Act and all their property, both real and personal, restored to them and conserved for them as contemplated by said [fol. 143] Act.

Your petitioners further pray that a date be fixed for a hearing on this petition which your petitioners are serving on the attorneys for said M. R. Johnson, the said United States National Bank and the said alleged trustee, and Catherine Collins, and that in the meantime the said trustee be restrained from taking any further proceedings to sell the personal property of your petitioners or from doing anything else in relation to their property or their property rights.

Respectfully submitted, Martin Bernards, Lena Bernards, Petitioners. B. G. Skulason, Skulason & Skulason, Attorney for Petitioners.

Duly sworn to by Martin J. Bernards. Jurat omitted in printing.

[fol. 144] STATE OF OREGON,
County of Multnomah, ss:

I, B. G. Skulason, being first duly sworn, depose and say that I am one of the attorneys for the within named petitioning bankrupts; that on the 14th day of January, 1937, I served the within petition on Mr. E. B. Tongue, attorney for M. R. Johnson, the principal creditor of said bankrupts, and on Honorable George R. Bagley, the attorney for Joseph Loomis, the trustee in said matter, by depositing in each instance in the United States Post-office at Portland, Oregon, a true copy of said petition duly certified to by me as such attorney for the petitioners, such copy being in each instance enclosed in a sealed envelope, postage prepaid, and addressed to said Mr. E. B. Tongue and said Honorable George R. Bagley, respectively, at Hillsboro, Oregon, which was and is the place of residence of said attorneys and that the said attorneys are the persons intended to be served with said petition. I further depose and say that between the City of Portland, and the City of Hillsboro, Oregon, there is communication by mail.

B. G. Skulason.

Subscribed and sworn to before me this 14th day of January, 1937. Rolfe W. Skulason, Notary Public for Oregon. My commission expires Feb. 25, 1939.

[fol. 145] STATE OF OREGON,
County of Multnomah, ss:

I, C. W. Powers, being first duly sworn, depose and say that I am over the age of 21 years, a citizen of the United States and a resident of the City of Portland, said state; that on the 14th day of January, 1937, at the hour of 11:30 A. M. I personally served the foregoing Petition on Arthur D. Platt, attorney for the United States National Bank of Portland, Oregon, at his office in the Platt Building in said City, by then and there delivering to and leaving with him a certified copy of said Petition.

C. W. Powers.

Subscribed and sworn to before me this 14th day of January, 1937. Rolfe W. Skulason, Notary Public for Oregon. My commission expires February 25, 1939.

[File endorsement omitted.]

[fol. 146] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF CATHERINE H. COLLINS TO BANKRUPTS' PETITION
FILED JAN. 15, 1937—Filed June 15, 1937

To the Honorable James Alger Fee, Judge of the Above
Entitled Court:

Catherine H. Collins for her answer to the petition of the bankrupts filed herein on January 15, 1937, represents and shows:

I

On October 31, 1929 said bankrupts, Martin J. Bernards and Lena Bernards, his wife, executed to Catherine H. Collins a promissory note and a mortgage to secure the same on the following described property situated in Washington County, Oregon:

Beginning at a stone at the southwest corner of the Caleb Wilkins and wife DLC No. 49 T 1 N R 2 W of Willamette Meridian, in Washington County, Oregon; and running

thence N 1 degree 00' W on West boundary of claim 29.15 chs. (1023.9) ft. to a pipe 2" dia., thence S 79 degrees 51' E 27.97 $\frac{1}{4}$ chs. (1842.6 ft.) to a pipe 2" dia., thence S 1 degree 00' E 29.15 chs. to a pipe corner on south boundary of said DLC set by J. C. Hall, in 1893, thence N 79 degrees 51' W. 29.97 $\frac{1}{4}$ chs. to the place of beginning, containing 80 acres of land.

On April 12, 1933 on account of defaults in the payment [fol. 147] of said mortgage, said Catherine H. Collins commenced a suit to foreclose the same against said bankrupts and others. On July 9, 1935 a decree of foreclosure was made and entered, and on August 26, 1935, a sale of said real property in said foreclosure suit was made to Catherine H. Collins for the sum of \$10,689.35, and thereupon said Catherine H. Collins went into and has continued to be in possession of said land. On September 16, 1935 said sale was confirmed, and on September 10, 1936 a sheriff's deed on said foreclosure sale was executed to Catherine H. Collins and was thereafter duly recorded.

Catherine H. Collins has paid the following State and County taxes on said land:

Mar. 14, 1936—1936 in full	\$211.20
Dec. 12, 1936—1935 in full	228.89
" " " —1931 1st $\frac{1}{4}$	60.48
Mar. 15, 1937—1937 1st $\frac{1}{4}$	52.85
	<hr/>
	\$553.42

The following State and County taxes are unpaid:

1931 $\frac{3}{4}$	181.44
1932 all	272.81
1933/4 all	234.99
1937 $\frac{3}{4}$	158.54
	<hr/>
	\$847.78

Recently and since she has obtained the sheriff's deed above mentioned, said Catherine H. Collins has attempted to sell said land and had a buyer ready, able and willing to purchase for the sum of \$6400.00 subject to the payment of broker's commission and the unpaid taxes from 1931 to 1934 inclusive, but said sale fell through because of this pro-[fol. 148] ceeding in bankruptcy.

Mr. M. R. Johnson and the United States National Bank of Portland, Oregon are in a position like that of Catherine H. Collins, and together with her are the owners of all the real property included within this bankruptcy proceeding.

II

At the present time, the net results of this bankruptcy case as to the property of the bankrupts are that their exemptions have been set aside to them of articles with an appraised value of \$497.00; all their other personal property has been sold and the proceeds thereof in the sum of something over \$6,000.00 is in the hands of the trustee for distribution to creditors, but as Catherine H. Collins is informed and believes and therefore alleges, said trustee is unwilling to make said distribution until he is cleared of liability, particularly on account of said bankrupts' petition filed herein on January 15, 1937.

III

The bankrupts are not entitled to further consideration or to any relief other than their discharge in bankruptcy for the following reasons:

(a) All matters contained in and prayed for in bankrupts' petition filed January 15, 1937, have been adjudicated and determined adversely to the bankrupts, and no appeal therefrom within the time allowed by law has been taken [fol. 149] by said bankrupts.

(b) The only proposals for composition and extension by bankrupts were made on September 5 and December 4, 1934, in which proposals, it was stated that the funds with which to make said composition would be obtained through a loan to the bankrupts from Federal Land Bank, and when said proposals were made Federal Land Bank had refused to make such a loan, and the refusal was known to the bankrupts. Said proposals were not accepted by the creditors, and the Conciliation Commissioner reported to this court that the second proposal had been rejected by M. R. Johnson, the majority creditor, that the Conciliation Commissioner had set December 14, 1934 as the date for filing an application for the confirmation for said extension proposal; no application for confirmation was made or filed, and the Conciliation Commissioner in his report to this

court submitted that his duties had been completed. The bankrupts have neither applied for nor obtained an order of this court on their proposal, the rejection thereof or on the Conciliation Commissioner's report.

(c) The bankrupts have made no attempt to comply with the conditions required of them in order that they might obtain the rights and privileges of a three years' stay of the bankruptcy proceedings and possession of the real property on a rental basis as provided in Sec. 75 (S) of the Bankruptcy Act.

[fol. 150] (d) The bankrupts have not submitted any proposal for a composition and extension which was an equitable and feasible plan for the liquidation of the claims of their secured creditors or which would result in the financial rehabilitation of the bankrupts.

(e) The bankrupts are in truth and in fact beyond all hope of financial rehabilitation and the only effect of further proceedings and delays on their behalf in this bankruptcy proceeding will be to postpone the inevitable liquidation of their financial affairs without benefit to them and with great hardship to Catherine H. Collins and to all others similarly situated.

IV

By reason of the foregoing allegations and of other matters appearing in the records and files in the above entitled matter and which by reference are made a part of this answer, the said Catherine H. Collins was from the date of her mortgage, October 31, 1929, and until the date of sale on the foreclosure of said mortgage, August 26, 1935, a secured creditor of said bankrupts, and thereafter and since August 26, 1935, she has been and now is the sole and exclusive owner of the land described in said mortgage subject only to the statutory right of redemption which expired on August 26, 1936 but the title to said land in Catherine H. Collins is clouded by bankrupts' said petition filed January 15, 1937, and by their threats to interpose other proceedings [fol. 151] as long as their bankruptcy is pending.

Wherefore, Catherine H. Collins Prays for an order and decree as follows:

1. That the bankrupts' petition filed January 15, 1937 be dismissed.

2. That the title of the above described land be decreed to be in Catherine H. Collins free and clear of all right, title and interest of Martin J. Bernards and Lena Bernards under this bankruptcy proceeding.

3. That the trustee be ordered to distribute the cash on hand and that the trustee and Conciliation Commissioner take such other proceeding as will speedily complete and close this bankruptcy proceeding.

4. For such other and further relief as to this court may seem proper.

Catherine H. Collins. W. L. Brewster, Attorney for
Catherine H. Collins.

Duly sworn to by Catherine H. Collins. Jurat omitted in printing.

[fol. 152] STATE OF OREGON,
County of Multnomah, ss :

I hereby certify that I served the foregoing Answer upon Martin J. Bernards and Lena Bernards by mailing them a duly certified copy of said answer, addressed to them at Aloha, Oregon on June 14, 1937.

W. L. Brewster, Attorney for Catherine H. Collins.

[File endorsement omitted.]

[fol. 153] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF JOSEPH M. LOOMIS, TRUSTEE, TO PETITION OF
BANKRUPTS FILED JANUARY 13TH, 1937—Filed July 7, 1937

Comes now Joseph M. Loomis, Trustee, and for answer to the petition of Martin J. Bernards and Lena Bernards, filed in this court and cause on the 13th day of January, 1937, alleges :

I

That on the 19th day of December, 1934, Martin J. Bernards and Lena Bernards were, by order and judgment of this court, duly adjudicated bankrupts, and said bankrupts sought relief under the provisions of the "Frazer-Lemke" amendment, known as subdivision "S", Section 75 of the Act of Congress, known as the Bankruptcy Act.

II

That on September 30th, 1935, by order of this court duly made and entered, said cause was referred to H. A. Kuratli, Conciliation Commissioner of Washington County. That thereupon said bankrupts filed a petition praying for an order of said Commissioner granting to said bankrupts immediate possession and control of all of the property, real and personal, enumerated and listed in the scheduled [fol. 154] ules attached to the amended debtor's petition, filed by them in this court and cause. That M. R. Johnson and United States National Bank of Portland, Oregon, appeared in said cause and answered said petition and set forth in said answer their mortgage upon the real property described in said schedules, the foreclosure thereof, all proceedings in the Circuit Court of the State of Oregon for Washington County, and the sale of said premises by the Sheriff of Washington County pursuant to decree of said State Court to the said M. R. Johnson and United States National Bank. That upon due and legal proceedings had before said Commissioner upon said petition and answer, in which the said bankrupts appeared in person and by counsel, said Commissioner, upon said issues so presented, the said Commissioner having jurisdiction so to do, on the 8th day of August, 1936, entered the order and judgment following, namely:

"It is therefore Ordered and Adjudged that the said bankrupts have no right, title or interest in or to any of the real property set forth in said decree except Tract No. 15.

"It is further Ordered and Adjudged that no legal or valid offer of composition has ever been made by the bankrupts to their creditors.

"It is further Ordered and Adjudged that said subsection (s) of Section 75 of the Bankrupt Laws as amended and approved on August 28, 1935, has no application to the real property described in said decree hereinabove set forth.

"It is further Ordered and Adjudged that said bankrupts are not farmers within the meaning of said subsection (s) of said Section 75 of the Bankrupt Laws as amended and [fol. 155] approved on August 28, 1935.

"It is further Ordered, Adjudged and Decreed that the above named bankrupts are not entitled to the benefits of the provisions of sub-section (s) of said Section 75 of the Federal Bankrupt Law as amended and approved on August

28, 1935, and that said petition of bankrupts be and hereby is denied.

"It is further Ordered, Adjudged and Decreed that a trustee be appointed of all the personal property of said bankrupts and that it be sold or otherwise disposed of for the purpose of liquidating the debts of said bankrupts."

That no petition for review of said order was ever filed and no review thereof has ever been had and said order and judgment of said Commissioner aforesaid has become final.

III

That during the foreclosure of the mortgage upon the land described in the schedules attached to the amended petition of the bankrupts filed December 19th, 1934, the bankrupts herein named filed in this court and cause a petition seeking an order restraining the Sheriff of Washington County from executing a writ of assistance ousting the said bankrupts from the possession of the lands described in said foreclosure proceedings and upon said application ex parte a temporary order restraining said Sheriff from the execution of said writ of assistance was made and entered in this cause. That after full hearing upon said petition in which the bankrupts appeared by Counsel, this Court, on December 18th, 1935, duly made, rendered and entered an order and judgment as follows:

[fol. 156] "It appearing further to the Court that said real property was sold by said sheriff prior to the issuance of said restraining order to M. R. Johnson and The United States National Bank of Portland (Oregon) under and pursuant to an execution issued out of said Circuit Court, pursuant to a decree duly made and entered in said Court, that said sale was duly confirmed by said Circuit Court and that said Circuit Court had jurisdiction over said suit and the parties thereto and the subject matter thereof, which jurisdiction it acquired prior to the commencement of any of the proceedings herein, and that by reason thereof the threatened acts of the Sheriff of Washington County (Oregon) would not constitute an interference with any property of the bankrupt as defined by the Acts of Congress.

"It is hereby Considered and Ordered that said temporary restraining order, and the whole thereof, be, and it is, hereby

vacated and set aside and that the application of said bankrupts for the continuance of said restraining order be, and it is, hereby denied."

That no appeal from said judgment and order has even been taken or prosecuted by the bankrupts, and that the time for such appeal has long since expired and said order has become final.

IV

That on the 29th day of August, 1936, pursuant to written notice given to all creditors of said bankrupts by the Conciliation Commissioner a meeting of the creditors of said bankrupts was held at Hillsboro, Oregon, on said date, whereat, on said day Joseph M. Loomis, by the majority vote in number of claimants who had presented their claims against said bankrupt estate and majority in amount of claims, was, by said creditors, duly elected trustee of said bankrupt estate, and on September 3, 1936, said election [fol. 157] aforesaid was, by order made and entered by the Commissioner, duly ratified, and by said order the bond of said trustee was fixed at the sum of \$1000.00. That thereafter said Joseph M. Loomis filed in this cause his bond as such trustee in the sum of \$1000.00 conditioned as by law prescribed and on September 4th, 1936, the said bond, by order of said Commissioner was duly approved and said Joseph M. Loomis thereafter proceeded to administer the assets of said bankrupt estate and has continued so to do in the manner hereinafter more particularly set forth. That the bankrupts filed in said proceeding a notice of appeal and based thereon the said Conciliation Commissioner prepared and filed with the Clerk of this Court a certificate of review of said orders of September 3rd and September 4th, aforesaid. That after due notice and hearing upon such review, on December 14th, 1936, this Court duly made, rendered and entered the following order:

"Martin J. Bernards and Lena Bernards, the above-named bankrupts, having heretofore filed with H. A. Kurathi, Conciliation Commissioner for Washington County, Oregon, their petition for review in the form of and entitled "Notice of Appeal" from that certain order of said Conciliation Commissioner for Washington County, in the above entitled cause, dated August 29, 1936, and that certain order of said Conciliation Commissioner dated September

4, 1936, and said Conciliation Commissioner having transmitted said petition or notice to this court, together with his certificate thereon, and the court having considered the same and being fully advised,

“Now, therefore, it is Considered and Ordered that the aforesaid orders of said Conciliation Commissioner be, and [fol. 158] they are hereby affirmed, and said petition or notice be, and it is hereby, denied.”

That said bankrupts have not appealed from said order and judgment so entered, as aforesaid, and the time for appeal has long since expired and said judgment of this court has become final.

V

That on the 13th day of January, 1937, upon filing by the bankrupts of the petition now pending in this Court and to which this answer is now made, application was made to this court for an order restraining and enjoining Joseph M. Loomis, Trustee, from selling the personal property listed and enumerated in the schedules attached to the amended debtor's petition filed by the bankrupts on December 19th, and after an ex parte hearing thereon such temporary order of restraint was refused and denied by this court. That no appeal has been taken from such order denying said temporary order of restraint.

VI

That during all of the time after the election, confirmation and qualification of the Trustee in this cause, and relying upon the orders and judgments of this court as authority therefor, said Trustee has proceeded with the administration and disposal of the assets of said estate in conformity with the general provisions of the Act of Congress relating to Bankruptcy. That an inventory of all the property of said bankrupts was filed and appraisement thereof was duly made by appraisers duly appointed by order of said commissioner; that at a meeting of the creditors of said bankrupts, duly called and held, upon notice, the sale of the property of said bankrupt estate was authorized, and pursuant to such authorization and the orders of said Commissioner duly made and entered, the personal property, except such portions thereof set out to

the bankrupts as exempt under the laws of the State of Oregon, claimed, designated and selected and received by the bankrupts, was sold at public auction or private sale as directed by said orders of said Commissioner, and your Trustee has received from the sale thereof the sum of \$7,835.06.

VII

That your Trustee, upon order of the Commissioner, has paid out for expenses of securing possession, caring for, preparing for sale, and selling said property, and other expenses of administration, the following sums to the persons named and for the purposes specified:

Name	Purpose	Amount
John Deer Plow Co.,	Sale price Fertilizer Spreader owned by said Company,	\$ 104.58
M. R. Johnson,	For money advanced to enable the Trustee to care for the property, and other expenses, . . .	457.54
M. R. Johnson	For interest on moneys advanced	8.44
Carl Stribich	Repairs on engine and harvester	1.45
Beck's Grocery	Oil and gasoline	3.72
[fol. 160]		
Eugene McCornack	Labor and services and use of truck	15.00
Sam Marshall	For labor	5.00
Kenneth Marshall	For labor	144.00
A. Norene	For labor	25.90
Hillsboro Argus,	Publication of sale notice	13.65
Washington County News Times	Publication—sale notice	7.20
S. E. Fayram	Printing hand bills	7.50
Morning Oregonian	Reader notice of sale	1.68
Oregon Journal	Reader notice of sale	1.38
J. J. Wismer	Clerk at sale	58.09
J. W. Hughes	Auctioneer at sale	174.27
R. J. Nicol & E. W. Olmquist		
Veterinarians	Veterinary service	16.00
E. E. Hanyen	Court reporter for partial transcript of testimony	14.25
E. E. Hanyen	Court reporter, one day's per diem and transcript of testimony Martin J. Bernards	60.00
W. C. Christensen	Appraiser's fee	12.50
Carl G. Bechen	Appraiser's fee	12.50
E. A. Griffith	Appraiser's fee	12.50
Bagley & Hare	Part payment, attorney's fees	250.00
Hamilton Motor Co.	Loading farm machinery	4.00
Burlingham & Sons	For salt for sheep	1.60
Parsons Truck Co.	Transportation of tractor	7.50
Ernest Lehman	Refund excess payment for straw	23.37
Dr. Nicol	Witness fees	2.00
[fol. 161]		
Charles Kyler	Witness fees and mileage	3.00
A. Norene	Witness fees and mileage	3.00
Joseph M. Loomis	Traveling expenses and telephone tolls	45.05
Total paid out		\$1,512.67

That there will be further expenses of administration, the amount whereof at this time cannot be definitely stated, including compensation of Trustee and compensation of attorneys for the Trustee, in addition to the partial payment of attorney's fees heretofore mentioned.

VIII

That there has been presented and allowed as preferred claims against said bankrupt estate and entitled to payment in full, the following claims in favor of the persons named, and for the amount specified, namely:

Name	Purpose	Amount
State Industrial Accident Commission of Oregon	Percentage of pay roll	\$134 62
Peter Bergerson	Chattel Mortgage on sheep as stipulated	232 00
Washington County	Taxes on personal property	593 59
Total Preferred claims		\$960.21

IX

That the following general claims have been presented and allowed:

[fol. 162]

Name	Consideration	Amount
Portland, General Electric Co.	Electric service	\$ 105 08
Delta Drug Store	Drugs and supplies	16 21
Shell Oil Co.	Gasoline and oil	99 22
Ralph Fenton	Medical services	367 50
Floy Constance Arms Executrix	Labor and Material	50 65
Sawtell-Withington & Co.	Services as Accountants	200 00
Dr. A. O. Pitman	Medical services	63 00
MacKenzie Motor Co.	Repairs and parts	33 10
Peter Bergerson	Moneys borrowed	1,720 19
Dr. Harrison D. Hugins	Medical Services	12 50
J. P. Kavanaugh	Legal services	2,825 00
John Luginbohl	Labor	55 00
Hillsboro Feed Co.	Seed and feed	43 92
M. R. Johnson & U. S. National Bank	Deficiency judgment on Foreclosure	18,836 66
Herbert R. Marty	Labor	56 53
A. K. Pickens	Blacksmith services	75 72
Chas. W. Kyler	Labor	60 00
Gordon Vikan	Labor	22 00
P. L. Patterson	Legal services	67 50
First National Bank		
Forest Grove	Moneys advanced	11 00

[fol. 163]

Name	Consideration	Amount
Raymond E. Watkins	Medical Services	185.00
Dr. R. J. Nicol	Veterinary services	12.50
Emanuel Hospital		
Portland,	Hospital services	50.00
Lucy Duyck	Moneys Borrowed	5,234.98
Lucy Duyck	Moneys borrowed	1,470.44
Winnifred Dellman	Domestic services	75.00
Patricia Duyck	Money borrowed	175.00
Laurelwood Academy	Over-payment upon chopped hay	108.00
Total Common claims		\$32,032.40

X

That the real property described in the schedules attached to the amended debtors petition, filed in this cause December 19th, 1934, which was then subject to the mortgages mentioned and specified in said schedules has been sold upon foreclosure decrees and deeds therefore executed by the Sheriff of Washington County to purchasers at the sale thereof, except the undivided one-eighth interest of the bankrupt in and to the land described in said schedules designated as the seventeenth tract, and your Trustee has not at any time had possession or control of any of the lands described in said schedules. That said undivided one-eighth interest in said tract, specified in said schedules as Tract No. 17, is subject to a mortgage in the sum of \$1500.00 and accrued interest in favor of J. M. Vanderzanden, and said mortgage *and is* a valid mortgage and said J. M. Vanderzanden has sought permission to foreclose the same. [fol. 164] That the amount due upon said mortgage is largely in excess of the fair market value of said undivided one-eighth interest of the said bankrupts, and in fact said bankrupt estate has no substantial interest in said land that would justify the Trustee in incurring expense in the sale thereof.

XI

That the said bankrupts have made no attempt to comply with the conditions required of them by the "Frazer-Lenke" amendment to the Acts of Congress in relation to bankruptcy, necessary to be complied with by them in order to obtain the right and privilege of a three years' stay of enforcement of the obligations owned and held by their creditors and possession of the real and personal property described in the schedules attached to their debtor's petition

on file in this cause on a rental basis, as provided in subdivision "s" of Section 75 of the Bankruptcy Act.

XII

That the said Martin J. Bernards and Lena Bernards, Bankrupts, have never at any time submitted any proposal for a composition and extension which was an equitable and feasible plan for the liquidation of the claims of their secured creditors or other creditors which would result in the financial rehabilitation of the said Bankrupts.

[fol. 165]

XIII

That the said Martin J. Bernards and Lena Bernards at the time of the inception of this proceeding in August, 1934, at the time of the filing of the debtor's petition, on December 19th, 1934, and at all times thereafter, have been in truth and in fact beyond all hope of financial rehabilitation and the only effect of further proceedings and delays on their behalf in this bankruptcy proceeding will be to postpone the inevitable liquidation of their financial affairs without benefit to them and resulting in great hardship to the creditors, preferred and common, of the said bankrupts.

XIV

On account of the allegations and averments aforesaid, and by reason of other matters appearing in the record and files, in this cause and which, by reference, are made a part of this answer, the bankrupts have shown and established that there has at no time since the inception of these bankruptcy proceedings, been any possibility of financial rehabilitation of the bankrupts; that they have been barred and precluded from the relief conditionally granted by subdivision "s" of Section 75 of the Bankruptcy Act.

Wherefore, the Trustee of said Bankrupt estate prays for an order and decree:

1. That the petition of the bankrupts filed in this cause [fol. 166] on January 13, 1937, be dismissed;

2. The orders and judgments of the Conciliation Commissioner herein referred to are final and conclusive on said bankrupts, precluding further consideration of the questions so determined;

3. That the orders and judgments of this court hereinbefore referred to, have become final and said bankrupts bound and precluded thereby;

4. Ratifying and confirming all of the actions of the Trustee in selling and disposing of the personal property listed and enumerated in the bankrupt schedules, and the payment of expenses of said proceeding hereinbefore set forth; and

5. Directing the payment of additional expenses, Trustee compensation and attorneys' fees, preferred claims, and distribution of the remainder of said moneys to the common creditors whose claims have been presented and allowed pro rata, and for such other order and decree as may be proper.

Joseph M. Loomis, Trustee in Bankruptcy.

Bagley & Hare, Attorneys for Trustee in Bankruptcy.

[fol. 167] *Puly sworn to by Joseph M. Loomis. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 168] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO BANKRUPT'S PETITION FILED JANUARY 15, 1937—
Filed September 1, 1937

To the Honorable James Alger Fee, Judge of the above entitled court:

M. R. Johnson and The United States National Bank of Portland, (Oregon), for their answer to the petition of the bankrupts filed herein on January 15, 1937, admit, deny and represent as follows:

I

These answering parties hereby refer to all the records and files in this cause and, by such reference, hereby make the same a part of this answer.

II

On or about April 4, 1930, said bankrupts, being then indebted to M. R. Johnson, one of the aforesaid answering

parties, in the sum of \$70,000.00, made, executed and delivered to him their promissory note for said sum of \$70,000.00 due on or before four months after date, with 8% interest from date until paid, and contemporaneously therewith and to secure the payment thereof made, executed and delivered to said M. R. Johnson their certain mortgage, wherein and [fol. 169] whereby they mortgaged to said M. R. Johnson all that certain real property in Washington County, Oregon, described in the inventory and schedules of said bankrupts herein as parcels 1 to 16, inclusive. Parcel 15 of said lands was, at the date of said mortgage, subject to a prior mortgage held by one Catherine C. Collins, and parcel 16 thereof was subsequently, and on or about February 24, 1931, released by said M. R. Johnson from the aforesaid mortgage, and mortgaged by said bankrupts to the World War Veterans' State Aid Commission of Oregon, and a new mortgage covering said parcel 16 but junior to said last mentioned mortgage was thereafter made, executed and delivered by said bankrupts to said M. R. Johnson.

III

Part of the money loaned by said M. R. Johnson to said bankrupts as aforesaid was borrowed by said M. R. Johnson from The United States National Bank of Portland, (Oregon), and both of the aforesaid mortgages given by the bankrupts to said M. R. Johnson, and also the hereinafter mentioned bonds, were by said M. R. Johnson assigned to said bank in order to secure the aforesaid loan from said bank to said M. R. Johnson. Part of the money so loaned by said M. R. Johnson to said bankrupts was used by said bankrupts to purchase certain waterworks extension bonds of the City of Orenco of the Tualatin Valley, a municipal corporation of the State of Oregon, numbered 6, 7, 8, 9, 10, 11 and 41, of the par value of \$1,000.00 each, except that [fol. 170] \$400.00 had been paid on account of said bond #6, all with interest coupons numbered 18 to 30, inclusive, attached, the entire purchase price of said bonds being paid for out of said loan, and said bankrupts thereupon pledged said bonds with said M. R. Johnson as additional security for said loan.

IV

Thereafter said mortgages to said M. R. Johnson and the pledge of said bonds became in default and, on the 6th day

of April, 1934, said M. R. Johnson and The United States National Bank of Portland (Oregon) filed a suit in the Circuit Court of the State of Oregon, for Washington County, to foreclose said two mortgages and said pledge, and thereafter and on July 11, 1934, after trial of said suit, said Circuit Court made and entered a decree foreclosing said mortgages and said pledge and directing the property included therein to be sold as provided by law. A true copy of said decree is attached hereto, marked "Exhibit A", and by this reference made a part hereof.

V

Pursuant to said decree and to an execution issued thereon, the aforesaid real property was, on June 29, 1935, sold to said M. R. Johnson and The United States National Bank of Portland (Oregon) for the sum of \$65,000.00, and the aforesaid bonds were sold to said purchasers for \$2,541.40. Objections were filed to the confirmation of said sale by said bankrupts, which objections were duly heard by said Circuit Court, and said court on July 20, 1935 over-[fol. 171] ruled said objections and confirmed and approved said sale by an order, a true copy of which is attached hereto, marked "Exhibit B", and by this reference made a part hereof, and said M. R. Johnson and The United States National Bank of Portland, (Oregon) have been entitled to the exclusive possession of all of said real property since the date of said sale, subject only to the rights of the aforesaid Catherine Collins in and to said parcel 15.

VI

Thereafter a writ of assistance was issued by said Circuit Court, directing the Sheriff of Washington County, Oregon to eject and dispossess said Martin J. Bernards and Lena Bernards from all said real property and, thereafter, upon the application of said bankrupts, the above entitled court made a temporary restraining order restraining said sheriff from executing said writ of assistance and requiring him to show cause why said temporary restraining order should not be made permanent. Said sheriff filed his answer and showing of cause thereto and, after hearing thereon, the above entitled court did, on December 18, 1935, dissolve and set aside said temporary restraining order, and thereafter and on or about February 1, 1936, said sheriff removed

said bankrupts from said real property and placed said M. R. Johnson and The United States National Bank of Portland (Oregon) in possession thereof, and said answering parties have ever since been in full possession of said [fol. 172] real property, except said parcel 15 whereof said Catherine Collins is in possession.

VII

Thereafter, and more than a year after the aforesaid sheriff's sale, said sheriff issued his sheriff's deed of said real property to these answering parties, M. R. Johnson and The United States National Bank of Portland (Oregon), and said deed was duly recorded as provided by law.

VIII

These answering parties have leased portions of the aforesaid real property as follows:

The large barn or packing shed thereon to Evergreen Feeding Company, a corporation;

150 acres to George Hendricks and Vernon Burlingham;

72 acres to A. L. Croeni;

22 acres to Chris Rich;

18 acres to David Rich;

10 acres to Wm. Enschede;

The dwelling on one of the Orenco town lots to Wm. Anderson;

The store building on one of the Orenco town lots to C. Beck;

and said tenants, and each of them, are in possession of the premises so leased to them.

IX

Said M. R. Johnson has paid taxes on said real property as follows:

For the year 1930 (balance)	\$2,389.80
For the year 1931 (one-fourth)	715.59
For the year 1935 (all)	1,964.12
For the year 1936 (all)	1,913.58
For the year 1937 (all)	1,857.92
For the year 1931 (one-fourth)	715.59

[fol. 173] and has paid to the World War Veterans' State Aid Commission, on account of principal and interest on the aforesaid mortgage on parcel 16 of said real property to said Commission, the total sum of \$1,248.27.

X

Martin J. Bernards, one of the above-named bankrupts, has from time to time made threats of legal action and of bodily harm against persons dealing with and employed by said M. R. Johnson and, by reason thereof and by reason of the pendency of said bankrupts' petition filed herein on January 15, 1937, said M. R. Johnson has been hampered, interfered with, and damaged in the management and use of said real property, and said answering parties are informed and believe and therefore allege that prospective purchasers have been deterred from purchasing said real property by the aforesaid activities of said Martin J. Bernards.

XI

After the aforesaid sale of real property by the Sheriff of Washington County, Oregon, and his sale of pledged personal property which took place at the same time, there remained and still does remain a large deficiency judgment in favor of these answering parties and against the aforesaid bankrupts, and these answering parties have duly filed their claim herein and are unsecured creditors of said bankrupts therefor.

The personal property of said bankrupts, other than that set aside as exempt to them, has been sold by the Trustee in Bankruptcy herein, and the proceeds thereof in the sum of [fol. 174] something over \$6,000.00 are in the hands of said Trustee for distribution to creditors but, as these answering parties are informed and believe and therefore allege, said Trustee is unwilling to make distribution thereof until said bankrupts' petition filed herein on January 15, 1937 is finally disposed of by the court.

XII

Said bankrupts are not entitled to further consideration herein or to any relief, other than their discharge in bankruptcy, for the following reasons:

(a) All matters contained in and prayed for in said bankrupts' petition filed January 15, 1937, have been adjudicated

and determined herein adversely to the bankrupts, namely, by the aforesaid order of the above entitled court dissolving said temporary restraining order against the Sheriff of Washington County, Oregon, and by the order of the Conciliation Commissioner made and entered herein on August 8, 1936, wherein it was determined, among other things, by said Conciliation Commissioner that said bankrupts could not rehabilitate themselves within three (3) years, that said bankrupts were not farmers within the meaning of subsection (s) of section 75 of the bankruptcy Act, that no bona fide offer of composition or extension had ever been made by them, that said bankrupts had never filed a petition under subsection (s) of section 75 of the Bankruptcy Act, as amended, for appraisal, for the setting aside of their exemptions, or for a stay, and that the court in this proceeding [fol. 175] had, since the aforesaid sheriff's sale, no jurisdiction of the aforesaid real property, parcels 1 to 16, inclusive, and that said bankrupts, at the time of said order, had no interest in said real property, and by the orders of the Conciliation Commissioner made and entered herein on August 29 and September 3, 1936, which orders respectively appointed the trustee herein and approved his official bond. No attempt was made by the bankrupts herein to bring about a review of or appeal from said order of the above entitled court made and entered December 18, 1935 or said order of the Conciliation Commissioner made and entered August 8, 1936, within the time allowed therefor or at all, and both said orders have long since become final. Said bankrupts filed an instrument, denominated a notice of appeal, to said orders of August 29 and September 3, 1936, and the Conciliation Commissioner, pursuant thereto, filed his certificate on review, whereupon said two orders were reviewed by the above entitled court and duly affirmed, and no appeal has been taken or attempted from the order of the above entitled court affirming the same, and the time therefor has long since expired.

(b) The bankrupts are and have, at all times since the commencement of the proceedings herein, been unable to refinance themselves within three (3) years or any other period, for the reason that the amount for which said real property, parcels 1 to 16, inclusive, was mortgaged to these [fol. 176] answering parties, the aforesaid Catherine Collins, and said World War Veterans' State Aid Commission

far exceeded the value of said real property at the time of its purchase by said bankrupts, and since said time the value of said property has greatly depreciated, and the amount of the indebtedness of the bankrupts was increased by the accrual and nonpayment of interest and by the accrual of unpaid and delinquent taxes, and said bankrupts were at no time able and would not now be able to secure a loan or loans on said real property sufficient to refinance themselves.

(c) The bankrupts are not farmers within the meaning of section 75 of the Bankruptcy Act, for the reason that they have no interest in farm land except an undivided one-eighth ($\frac{1}{8}$) interest in and to the real property described in their schedules as parcel 17. They are not engaged in farming and derive no substantial income from renting said parcel 17.

(d) Said parties have not, at any time, submitted any proposal for a composition or extension which was an equitable and feasible plan for the liquidation of the claims of their secured creditors or which would or could result in the financial rehabilitation of the bankrupts, and the purported plans submitted by the bankrupts were not submitted in good faith or with the intention or expectation that they would be accepted by said secured creditors.

(e) The bankrupts have made no attempt to comply with the conditions required of them in order that they might [fol. 177] obtain the rights and privileges of a three year stay of the bankruptcy proceedings and possession of real property on a rental basis as provided in section 75, subsection (s). of the Bankruptcy Act.

(f) The aforesaid real property, parcels 1 to 16, inclusive is not and has not been, since prior to the passage of the present subsection (s) of section 75 of the Bankruptcy Act, property of the bankrupts, and the bankrupts have no interest whatever in or claim against said real property, or any part thereof.

XIII

These answering parties, M. R. Johnson and The United States National Bank of Portland (Oregon), were from April 4, 1930, the date of the first mortgage to said M. R. Johnson, and until the date of sale on the foreclosure of

their mortgages, to wit, June 29, 1935, secured creditors of said bankrupts, and thereafter and since June 29, 1935, have been the sole and exclusive owners of the lands described in their said mortgages, to wit, parcels 1 to 14, inclusive, and parcel 16, subject only to the statutory right of redemption which expired June 29, 1936, but the title to said land in these answering parties is clouded by bankrupts' petition filed January 15, 1937, and by their threats to interpose other proceedings as long as their bankruptcy is pending. The continued pendency of the bankruptcy proceeding herein cannot result in the financial rehabilitation, either [fol. 178] complete or partial, of the bankrupts, and can be of no benefit to the bankrupts but is injuring and will continue to injure these answering parties and all others similarly situated by continuing to cloud their title to real property, and is injuring and will continue to injure the unsecured creditors of said bankrupts, including these answering parties, by preventing the Trustee in Bankruptcy from making distribution, as provided by law, of the money in his hands as aforesaid.

Wherefore, M. R. Johnson and The United States National Bank of Portland, (Oregon) pray for an order and decree as follows:

(1) that the bankrupts' petition filed January 15, 1937 be dismissed;

(2) that the title to the above described lands, parcels 1 to 14, inclusive, and parcel 16, be decreed to be in these answering parties free and clear of all right, title and interest of Martin J. Bernards and Lena Bernards under this bankruptcy proceeding;

(3) that the trustee be ordered to declare a dividend or dividends of the cash in his hands, and that the trustee and Conciliation Commissioner take such other proceedings as will completely close this bankruptcy proceeding;

(4) for such other and further relief as to this court may seem just and proper.

M. R. Johnson, The United States National Bank of Portland (Oregon), by Fred S. Meagher, V. Pres. E. B. Tongue, Platt & Black, Attorneys for M. R. Johnson and The United States National Bank of Portland, (Oregon).

[fol. 179] EXHIBIT "B" TO ANSWER

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE
NINETEENTH JUDICIAL DISTRICT (WASHINGTON COUNTY)

M. R. JOHNSON and THE UNITED STATES NATIONAL BANK OF
PORTLAND (OREGON), Plaintiffs,

vs.

MARTIN J. BERNARD (Sometimes Called Martin Bernards)
and Lena Bernards, Husband and Wife; John A. McGee,
B. A. Mitchell, A. O. Pitman, Agnes Bryant and Martin
Bernards, Commissioners of the City of Orenco of the
Tualatin Valley, Oregon; Ellen Pitman, City Recorder
of the City of Orenco of the Tualatin Valley, Oregon;
City of Orenco of the Tualatin Valley, Oregon; Date
Prune Products Company, a Corporation, A. Lindgren;
Regional Agricultural Credit Corporation of Spokane,
Washington, A. R. Sawtell, George T. Withington, and
Henry Meltebeke, Defendants

ORDER OF CONFIRMATION

Now at this time this matter coming on for hearing upon
the objection heretofore filed by the defendants, Martin J.
Bernards and Lena Bernards, husband and wife, to the sale
of the real property made herein, and upon a motion made
in open court by the plaintiffs for an order confirming the
sale of said real and personal property heretofore made,
and hereinafter described, by the Sheriff of Washington
County, Oregon, the plaintiffs appearing personally and by
E. B. Tongue, their attorney, and the defendants, Martin J.
Bernards and Lena Bernards, appearing personally and by
J. P. Kavanaugh, their attorney, and the Court having
taken, received and heard all the evidence produced thereon
[fol. 180] upon the part of the defendants, Martin J.
Bernards and Lena Bernards, and all the evidence produced
thereon on behalf of the plaintiffs, M. R. Johnson and the
United States National Bank of Portland, (Oregon), and

It Appearing to the Court that pursuant to said execution,
judgment, decree and order of sale issued out of and under
the seal of the above entitled court in the above entitled
cause on the 29th day of May, 1935, and issued upon a
judgment and decree rendered in the above entitled court
and cause in favor of the above named plaintiffs and against

the above named defendants, and commanding and directing J. W. Connell, Sheriff of Washington County, Oregon, to make sale of the real and personal property hereinafter described, and out of the proceeds of said sale or so much thereof as may be necessary, to pay, satisfy and discharge the decree and judgment made and entered in the above entitled court and cause on the 11th day of July, 1934, together with the interest and costs and expenses of said writ and sale, and which said real and personal property described in said execution, judgment and decree and order of sale and situate within Washington County, Oregon, is more particularly bounded and described as follows, to-wit:

(Description Omitted by Stipulation.)

[fol. 181] And it Further Appearing to the Court that said Sheriff after giving due and legal notice of the time and place of said sale of the real and personal property for and during the time and in the manner provided by law, the said Sheriff attended at the time and place fixed in said notice for said sale, to-wit: at the East door of the County Court House in Washington County, Oregon, at the hour of ten o'clock in the forenoon of the 29th day of June, 1935, and at said time and place the said Sheriff offered the said personal and real property hereinbefore described for sale, first offering said bonds at public auction to the highest bidder for cash in hand, first offering the same separately, and receiving no bids therefor, and then offered all of said bonds in one parcel, and sold the same to the plaintiffs herein for the sum of \$2500.00, said plaintiffs being the highest and best bidders therefor and \$2500.00 being the highest and best sum bid therefor; said sheriff then offered for sale at public auction to the highest bidder for cash in hand, subject to redemption as provided by law, each parcel of the real property hereinabove described separately and received no bid for any separate parcel thereof; and then offered for sale separately Block 23, First addition to Orenco, claimed to be owned by one G. A. Robson, and received no bid therefor, and then offered for sale separately according to the terms and conditions of said notice, Block 22, First Addition to Orenco, claimed to be owned by one H. E. [fol. 182] Burdette, and received no bids therefor, and then offered for sale separately Lots 3, 4, 5, and 6, Block 24, claimed to be owned by Washington County, Oregon, and

received no bids therefor, and then offered for sale separately the following land claimed to be owned by one B. A. Mitchell, to-wit: Lots 5 and 6 in Block 1, Orenco townsite; Lots, 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 block 15, First Addition to Orenco; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 block 16, First Addition to Orenco; Lots 1, 2, 3, 4, 5, 6, and 7 Block 17, First Addition to Orenco; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, Block 18 First Addition to Orenco; Lots 6, 7, 8, 9 and 10, Block 19, First Addition to Orenco; the said B. A. Mitchell being then present and bidding upon said property, and that the said lots last hereinabove described, and claimed to be owned by the said B. A. Mitchell, were sold to the plaintiffs herein for the sum of \$75.00, said sum being the highest and best sum bid therefor and the plaintiffs being the highest and best bidders therefor, and that said sale was made subject to redemption as provided by law; the said Sheriff then offered and exposed for sale according to the terms set forth in said notice, in one parcel, all the land hereinbefore described, and described in said execution, judgment, decree and order of sale, except the lots hereinabove described and claimed to be owned by the said B. A. Mitchell, together with all the right, title and interest which the said defendants, Martin J. Bernards and Lena Bernards, and both and each of them, [fol. 183] had in and to said property on the date of the execution of plaintiff's mortgage, to-wit: the 4th day of April, 1930, and all the right, title and interest the said defendants, and each and both of them, have subsequently acquired therein, at public auction to the highest bidder for cash in hand, subject to redemption as provided by law, when the plaintiffs M. R. Johnson and The United States National Bank of Portland (Oregon) bid therefor the sum of \$65,000.00, whereupon said Sheriff duly sold said real property to plaintiffs for the sum of \$65,000.00, they being the highest and best bidders and said sum being the highest and best sum bid therefore, and

It Further Appearing to the Court that on the 29th day of June, 1935, the said J. W. Connell, Sheriff of Washington County, Oregon, made due and legal return into this court upon said execution, judgment, decree and order of sale and of his doings and proceedings therein and thereunder, and filed the same with the clerk of the above entitled court on the 1st day of July, 1935, and that more than fifteen days have elapsed since the filing of said return into this court;

It Further Appearing to the Court that the sale of the personal property hereinabove described was absolute;

It Further Appearing to the Court that the real and personal property hereinabove described was at said time and place sold for more than the fair, reasonable value thereof, and sold for a larger amount and sum that this court would have been justified in fixing as an upset price therefor under [fol. 183] the evidence Submitted herein, and that the objections filed to the confirmation of said sale by the defendants Bernards have not been sustained; and

It Further Appearing to the Court from the evidence introduced and from an examination of the proceedings herein that said sale was in all respects duly and legally and regularly made and conducted and that said execution was in all respects duly and legally and regularly issued and that all proceedings had and done thereunder and pursuant thereto were and are legal, regular and valid, and that plaintiffs are entitled to have said sale confirmed.

It is, Therefore, Ordered, Adjudged and Decreed that the objections to the confirmation of said sale filed herein by the defendants, Martin J. Bernards and Lena Bernards, be and the same hereby are in all respects over-uled and that the request of the said defendants Bernards to have this court fix an upset price upon said land be and the same hereby is denied.

It is Further Ordered, Adjudged and Decreed that the sale of the real property hereinabove mentioned and described and sold by the Sheriff of Washington County, Oregon, to these plaintiffs as hereinabove set forth was and is in all respects legal, regular and valid and that the same be and hereby is in all respects confirmed and approved.

Dated at Hillsboro, Oregon, this 20th day of July, 1935.

(Sgd.) R. Frank Peters, Circuit Judge.

[fol. 185]

EXHIBIT "A" TO ANSWER

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE
NINETEENTH JUDICIAL DISTRICT (WASHINGTON COUNTY)

M. R. JOHNSON and THE UNITED STATES NATIONAL BANK OF
PORTLAND (OREGON), Plaintiffs,

VS.

MARTIN J. BERNARDS (sometimes called Martin Bernards)
and Lena Bernards, husband and wife; John A. McGee,
B. A. Mitchell, A. O. Pitman, Agnes Bryant and Martin
Bernards, Commissioners of the City of Orenco of the
Tualatin Valley, Oregon; Ellen Pitman, City Recorder of
the City of Orenco of the Tualatin Valley, Oregon; City
of Orenco of the Tualatin Valley, Oregon; Date Prune
Products Company, a corporation; A. Lindgren; Regional
Agricultural Credit Corporation of Spokane, Washing-
ton; A. R. Sawtell; George T. Withington; and Henry
Meltebke. Defendants

DECREE

This cause came on regularly for hearing, in open court,
on the 6th day of July, 1934, plaintiff M. R. Johnson appear-
ing by E. B. Tongue, his attorney, and plaintiff the United
States National Bank of Portland (Oregon) appearing by
Arthur D. Platt, of its attorneys, and the defendants Mar-
tin J. Bernards and Lena Bernards appearing by J. P.
Kavanaugh, of their attorneys, and none of the other de-
fendants appearing at this time, and

It Appearing to the Court that all the other defendants
have been duly served with summons in this cause and
have not made any appearance herein,

Now, Therefore, on Motion of plaintiffs, by their said
[fol. 186] attorneys, It is Ordered and Adjudged that said
defendants, John A. McGee, B. A. Mitchell, A. O. Pitman,
Agnes Bryant and Martin Bernards, Commissioners of the
City of Orenco of the Tualatin Valley, Oregon, Ellen Pit-
man, City Recorder of the City of Orenco of the Tualatin
Valley, Oregon, City of Orenco of the Tualatin Valley, Ore-
gon, Date Prune Products Company, a corporation, A.
Lindgren, Regional Agricultural Credit Corporation of
Spokane, Washington, A. R. Sawtell, George T. Withington,
and Henry Meltbeke, and each of them, are in default for

want of an answer or other pleading, and said default is hereby entered of record.

The court having heard the evidence submitted on behalf of the plaintiffs and the defendants Bernards, and having heard arguments of counsel, and being fully advised in the premises,

It is Ordered, Adjudged and Decreed as follows:

I

That plaintiffs have judgment against defendants Martin J. Bernards and Lena Bernards, and against each of them, for the sum of \$64,474.33, with interest thereon at the rate of 8% per annum from the 12th day of March, 1931, less \$4,126.00 credit against such interest, for the further sum of \$3,000.00 attorneys' fees, and for their costs and disbursements herein, taxed and allowed at \$47.00.

II

That the pledge by defendant Martin J. Bernards of the following described collateral, to-wit:

[fol. 187] Waterworks Extension Bonds of the City of Orenco of the Tualatin Valley, a municipal corporation of the State of Oregon, as follows:

Nos. 6, 7, 8, 9, 10, 11, and 41, for \$1,000.00 each, but \$400.00 has been paid on account of No. 6, leaving a balance of \$600.00, together with interest coupons attached to each bond and numbered 18 to 30 inclusive;

was and is a valid pledge thereof, and the same is hereby foreclosed, and that the same be sold as upon execution at law, and that at such sale the Sheriff of Washington County, Oregon, deliver the same to the purchaser thereof.

III

That plaintiffs' mortgage set forth and described in plaintiffs' amended complaint and recorded in book 114, on page 521, of the mortgage records of Washington County, Oregon, made, executed and delivered by the defendants Bernards, is a first and valid lien on the real property therein and hereinafter described, and that it be and the same hereby is foreclosed, and that said real property be sold as upon execution at law, and that at such sale the

plaintiffs, or either of them, be authorized to become a purchaser thereof, and that the purchaser at such sale be let into the possession of said property by the Sheriff of Washington County, Oregon.

IV

That plaintiffs' other mortgage, described in their second cause of suit and recorded in book 120, on page 517, of the mortgage records of Washington County, Oregon, Made, [fol. 188] executed and delivered by the defendants Bernards, is a valid lien on the real property therein and hereinafter described, and that it be and the same hereby is foreclosed, and that said real property be sold as upon execution at law, and that at such sale the plaintiffs or either of them, be authorized to become a purchaser thereof, and that the purchaser at such sale be let into the possession of said property by the Sheriff of Washington County, Oregon.

V

That the proceeds of the sales hereinbefore provided for be applied as follows:

- (a) to the costs and disbursements of such sales;
- (b) to the costs and disbursements incurred by plaintiffs in this suit;
- (c) To the payment of the attorneys' fees allowed plaintiffs in this suit;
- (d) to the payment of the sums hereinbefore adjudged to be due plaintiffs herein.

VI

That the property covered by said mortgages herein and hereby foreclosed is described as follows, to-wit:

(All in Washington County, Oregon.)

(Description omitted by stipulation.)

excepting from the foregoing the following parcels of land described in the mortgage records of Washington County, Oregon:

- In book 115 at page 175;
- In book 115 at page 176;
- In book 115 at page 178;
- In book 118 at page 519.

[fol. 189]

VII

That the balance of the proceeds arising from such sales, if any, after the payment of the several sums hereinbefore specified, shall be paid into the registry of this court to be disposed of as the court may direct.

VIII

That, upon the sale of said property, all the right, title and interest that the defendants Bernards, or either of the-, had in or to said property, at the date of the execution of said mortgages, or that either of said defendants has subsequently acquired therein or thereto, be sold, and that the defendants John A. McGee, B. A. Mitchell, A. O. Pitman, Agnes Bryant and Martin Bernards, Commissioners of the City of Orenco of the Tualatin Valley, Oregon, Ellen Pitman, City Recorder of the City of Orenco of the Tualatin Valley, Oregon, City of Orenco of the Tualatin Valley, Oregon, Date Prune Products Company, a corporation, A. Lindgren, Regional Agricultural Credit Corporation of Spokane, Washington, A. R. Sawtell, George T. Withington, and Henry Meltbeke, and each of them, and each and every person claiming by, from, through or under them, or any of them, are adjudged to have no right, title or interest in, lien upon or claim to said mortgaged property, or any part thereof, and that the defendants, and each of them, and every person claiming or to claim by, from, through or [fol. 190] under them, or any of them, be forever barred, foreclosed and enjoined from setting up or claiming any right, title or interest in, lien upon or claim to said property, or any part thereof, except only the statutory right of redemption as to said real property.

IX

That the restraining order heretofore made and entered herein be, and the same hereby is, dissolved.

X

That the sale of the hereinbefore described pledged personal property held as collateral shall be held at the same time as the real property hereinbefore directed to be sold and after notice for the same length of time required for the sale of real property.

XI

That if, after application of the proceeds of the sales of real and personal property hereinbefore directed, there be a deficiency, a judgment for such deficiency be docketed against the defendants Martin J. Bernards and Lena Bernards, and against each of them.

Dated at Hillsboro, Oregon, this 11th day of July, 1934.

George R. Bagley, Judge of the above entitled court.

[fol. 191] *Duly sworn to by M. R. Johnson et al. Jurats omitted in printing.*

[fol. 192] [File endorsement omitted.]

[fol. 193] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION OF M. R. JOHNSON AND THE UNITED STATES NATIONAL BANK OF PORTLAND (OREGON).—Filed February 17, 1938

Come now M. R. Johnson and The United States National Bank of Portland (Oregon) and respectfully move the court herein as follows:

(1) for an order confirming and making effective, so far as may be necessary, that certain order of the Conciliation Commissioner herein declaring that the bankrupts are not farmers within the meaning of subsection (s) of Section 75 of the bankruptcy law and not entitled to the benefit of such subsection (s);

(2) for an order to the effect that the real property described in the schedules herein as appraisals 1 to 16, inclusive, is not within the jurisdiction of this court, and that the bankrupts have no interest therein;

(3) for an order directing said Conciliation Commissioner to proceed to complete the administration of the estate of said bankrupts in the manner provided by the bankruptcy laws of the United States other than said section 75, to order payment of such dividend as may be proper, and [fol. 194] to close this bankruptcy proceeding as soon as may be reasonably possible.

This motion is based on the records and files of the above entitled cause.

E. B. Tongue, and Platt & Black, Attorneys for M. R. Johnson and The United States National Bank of Portland (Oregon).

[File endorsement omitted.]

[fol. 195] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE FOR SUPPLEMENTAL TRANSCRIPT OF RECORD—Filed
March 10, 1939

To G. H. Marsh, Clerk of the District Court of the United States, for the District of Oregon:

Please prepare a supplemental transcript of record on appeal in the above case consisting of the following papers:

1 Petition of Martin J. Bernards and Lena Bernards, filed January 15, 1937.

2 Answer of Catherine Collins.

3 Answer of Joseph Loomis, Trustee.

4 Answer of M. R. Johnson and The United States National Bank of Portland, (Oregon).

5 Motion of M. R. Johnson and The United States National Bank of Portland, (Oregon).

Martin J. Bernards, One of the Appellants.

[File endorsement omitted.]

[fol. 196] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 197] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT

In the Matter of MARTIN J. BERNARDS and LENA BERNARDS,
Bankrupts, Appellants,

VS.

M. R. JOHNSON, CATHERINE COLLINS, THE UNITED STATES
NATIONAL BANK OF PORTLAND, OREGON and Joseph M.
Loomis, Trustee, Appellees

BANKRUPTS' PETITION FOR LEAVE TO APPEAL UNDER BANK-
RUPTCY ACT, SECTION 24 (b)—Filed June 1, 1938

To the Honorable Judges of the United States Circuit Court
of Appeals for the Ninth Circuit:

Your petitioners, the above named bankrupts, conceiving themselves aggrieved by the two following orders of the United States District Court for the district of Oregon, made and entered on the 10th day of May, 1938, the first designated as an order and decree, the second designated as an order affirming order of Conciliation Commissioner, which orders deny your petitioners all of the benefits of Section 75 of the Bankruptcy Act, and your petitioners file their petition addressed to the discretion of this Honorable Court for leave to appeal in matter of law from the above designated orders of the District Court.

Your petitioners refer to the Assignment of Errors filed by them simultaneously with this petition setting forth the [fol. 198] errors made by the court below and giving the grounds for this appeal and make said Assignment of Errors a part hereof.

On an amended petition in bankruptcy filed in the United States District Court above named on the 19th day of December, 1934, the above named Martin J. Bernards and Lena Bernards were each duly adjudicated as of that date bankrupts, under subsection 's', Section 75 of the Bankruptcy Act, and asked in their petition to be granted all of the benefits of said Act, and that ever since said time have been bankrupts under Section 75, sub-section 's' of the Bankruptcy Act and that the said proceedings have never, to this date, been withdrawn, dismissed, annulled, set aside or vacated and that your petitioners are now and have

been, at all times hereinbefore mentioned, entitled to the full benefits of Section 75, sub-section 's' of the Bankruptcy Act.

The petition for review of the orders of the Conciliation Commissioner and the answer and reply were duly heard for review by the Honorable James Alger Fee, Judge of the United States District Court for the district of Oregon, on the 13th day of April, 1938, and after hearing the oral arguments and examining the records and files in the said case [fol. 199] made and entered the following orders:

"IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
DISTRICT OF OREGON

No. B-19268

In the Matter of MARTIN J. BERNARDS and LENA BERNARDS,
Bankrupts

ORDER AND DECREE

This matter coming on to be heard before the Honorable James Alger Fee, judge of the above entitled court, upon the motion of Catherine H. Collins, M. R. Johnson and The United States National Bank of Portland (Oregon) and J. M. Loomis, trustee, appearing by their respective attorneys for an order and decree herein based upon the findings of fact and conclusions of law made and filed herein, and the same having been duly considered;

It is Hereby Ordered, Adjudged and Decreed:

1. That the bankrupts' petition filed January 15, 1937 be dismissed.

2. That bankrupts' motion filed April 13, 1938 to vacate and set aside all orders of this Court, etc. be denied.

3. That the title to the real property situated in Washington county, Oregon, hereinbefore described and referred to in Finding of Fact XV and elsewhere in these bankruptcy proceedings as Parcel 15, be and it is hereby decreed to be in Catherine H. Collins free and clear from all right, title and interest of said bankrupts under this bankruptcy proceeding.

[fol. 200] 4. The title to the real property in Washington County, Oregon, hereinbefore described and referred to

in Finding XV and elsewhere in these bankruptcy proceedings as Parcels 1-14, inclusive, and Parcel 16, be and it is hereby decreed to be in M. R. Johnson and The United States National Bank of Portland (Oregon) free and clear of all right, title and interest of Martin J. Bernards and Lena Bernards under this bankruptcy proceeding.

5. That the actions of the trustee in taking possession of and selling and disposing of the personal property listed and enumerated in the bankrupts' schedules and the payment and expenses of said proceeding set forth in the trustee's answer be ratified and confirmed.

6. That the election by the creditors, confirmation by the Conciliation Commissioner and qualification of J. M. Loomis, as Trustee of the bankrupt estate of Martin J. Bernards and Lena Bernards, is in all things regular, and be, and hereby are, confirmed.

7. That the orders of the Conciliation Commissioner hereinbefore made be ratified and approved, and that said orders and the orders of this Court herein be a bar to any further proceedings on the part of the said bankrupts under subdivision "s" of Section 75.

8. That the trustee herein proceed as by law required to pay any additional expenses necessary for him to incur, the trustee's compensation and the fees for his attorney, the [fol. 201] preferred claims and thereupon distribute the remainder of the moneys in his hands to the common creditors of said bankrupts whose claims have been presented and allowed pro rata; and otherwise the trustee and Conciliation Commissioner shall take such proceedings as will speedily complete and close this bankruptcy proceeding.

Dated this 10 day of May, 1938.

(Signed) James Alger Fee, District Judge."

“IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
DISTRICT OF OREGON

No. B-19268

In the Matter of MARTIN J. BERNARDS and LENA BERNARDS,
Bankrupts

ORDER AFFIRMING ORDER OF CONCILIATION COMMISSIONER

Martin J. Bernards and Lena Bernards, the above named Bankrupts, having heretofore filed with H. A. Kuratli, Conciliation Commissioner for Washington County, Oregon, their petition for review of that certain order of said Conciliation Commissioner, dated the 11th day of January, 1937, denying the petition of said bankrupts, filed with said Commissioner on the 4th day of January, 1937, and said Conciliation Commissioner having duly certified such cause and therewith transmitted said petition, the motion to dismiss the same, and the order of dismissal;

[fol. 202] And the Court having considered the same and the arguments of respective counsel, and being now fully advised;

Now, Therefore, It Is Considered and Ordered that the order of the Conciliation Commissioner of Washington County, Oregon, dated the 11th day of January, 1937, dismissing the petition of said bankrupts, filed on January 4th, 1937, be, and the same hereby is, affirmed:

And It Is Further Ordered that the said Bankrupts are not entitled to the relief, or any part thereof, sought in said petition so filed with said Commissioner on January 4th, 1937.

Dated at Portland, Oregon, on this 10 day of May, 1938.

(Signed) James Alger Fee, Judge of the above entitled Court.”

Said orders of the District Court are erroneous in matter of law in that they deny your petitioners the benefits of Section 75, sub-section “s” of the Bankruptcy Act.

That the said orders above complained of also deny the petitioners the due process of law clause of the 14th amendment to the constitution of the United States.

Wherefore, your petitioners pray that they may be allowed in the discretion of this Honorable Court to appeal

in matter of law herein, that the prayer of said petition be granted and citations be issued directed to all of the appellees above named commanding them to appear before the United States Circuit Court of Appeals for the Ninth Circuit [fol. 203] cuit, to do and receive what may appertain to justice to be done in the premises, and that a praecipe may issue requiring the clerk of the United States District Court for the district of Oregon to transmit the record in this case to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated, this 31 day of May, 1938.

Martin J. Bernards, Petitioner; Lena Bernards, Petitioner.

Subscribed and sworn to before me this 31 day of May, 1938. Harry Frazer, Notary Public for the State of Oregon. My commission expires 11/17/41.

[fol. 204] IN UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed June 1, 1938

Now comes Martin J. Bernards and Lena Bernards, Appellants, and file these Assignments of Error complaining as follows:

I

That the Court erred in making and entering the two following orders on the 10th day of May, 1938, the first designated as an order and a decree, the second designated as an order affirming order of conciliation commissioner, which orders deny the petitioners all of the benefits of Section 75 of the Bankruptcy Act, and particularly sub-section "s" of said section, which orders are included in bankrupts' petition for leave to appeal and also in bankrupts' copy of papers filed to enable the Court to exercise its discretion in considering petition for appeal.

II

That the Court erred in Paragraph I of the order and decree made and entered by the Court on the 10th day of

May, 1938, by decreeing that the bankrupts' petition filed January 15, 1937 be dismissed.

III

That the Court erred in Paragraph II of said order and decree by denying the bankrupts' motion filed April 13, 1938 to vacate and set aside all orders of the Court made in derogation of the bankrupts' rights under Section 75, and particularly sub-section "s" of said Section 75.

[fol. 205]

IV

That the Court erred in Paragraph III of said order and decree in holding that the title to the real property situated in Washington county, Oregon, be decreed to be in Catherine H. Collins, free and clear of all right, title and interest of said bankrupts under this bankruptcy proceeding.

V

That the Court erred in Paragraph IV of said order and decree in decreeing that parcels 1 to 14 inclusive and parcel 16 of bankrupts' real property be decreed to be in M. R. Johnson and the United States National Bank of Portland, Oregon, free and clear of all right, title and interest of the said bankrupts under this bankruptcy proceeding.

VI

That the Court erred in Paragraph V of said order and decree in ratifying and confirming the actions of the trustee in taking possession of and selling and disposing of the personal property listed and enumerated in bankrupts' schedules, for the payment and expenses of said proceeding set forth in trustee's answer.

VII

That the Court erred in Paragraph VI of said order and decree by confirming the election and appointment of J. M. Loomis as trustee of the bankrupt estate of Martin J. Bernards and Lena Bernards.

VIII

That the Court erred in Paragraph VII of said order and decree by ratifying all orders of the conciliation commis-

[fol. 206] sioner before made, ratified and approved and the Appellants cite particular error because of the fact that the conciliation commissioner on the 8th day of August, 1936, made and entered an order denying the bankrupts the benefits of the Act, and in the said order of August 8, 1936, the said conciliation commissioner found that the bankrupts' proposal was in bad faith, when, as a matter of fact, no attack was ever made during the time allowed for such objection, which was during the debtor proceedings, and that the said order of August 8, 1936, also contained the finding that the bankrupts were not farmers within the meaning of the Act, all of which findings and orders were null and void; and the Court further erred in Paragraph VII herein referred to by holding that the orders of the Court be a bar to further proceedings on the part of said bankrupts, under sub-division 's' of Section 75.

IX

That the Court erred in Paragraph VIII of said order and decree by ordering a distribution of the funds in the hands of the trustee and for the payment of compensation and fees for his attorney.

X

That the Court erred in denying the petition of the bankrupts filed on January 4, 1937, asking to be allowed to proceed further under the provisions of Section 75, sub-division 's'.

XI

The Court erred in denying the bankrupts' petition of [fol. 207] January 15, 1937, which petition asked for a review of the proceedings and for the benefits of the Act to be granted the bankrupts.

XII

That the Court erred in making the said order and decree of May 10th, 1938, which order by force and effect of its ruling denied the bankrupts the provision of Section 75, sub-division 's', which is not in accordance with law and is in violation of the due process of law, clause of the 14th amendment of the Constitution of the United States.

XIII

That the Court erred in making an order on May 10, 1938, affirming the order of the conciliation commissioner, H. A. Kuratli, dismissing the petitions of the bankrupts, which was filed on the 4th day of January, 1937 and was ordered dismissed on the 11th day of January, 1937 by said conciliation commissioner.

Martin J. Bernards, One of the Bankrupts; Martin J. Bernards, by Attorney Appearing Specially to Contest the Jurisdiction of the District Court of the United States for the District of Oregon.

[File endorsement omitted.]

[fol. 208] IN UNITED STATES CIRCUIT COURT OF APPEALS

No. 8855

BERNARDS ET UX.

VS.

JOHNSON

PETITION AND ORDER EXTENDING TIME—Filed June 8, 1938

Beaverton, Oregon,
June 7, 1938.

Mr. Paul P. O'Brien, Clerk United — Circuit Court of Appeals, Ninth Circuit, San Francisco, Calif.

DEAR SIR:

Your letter of June 4, 1938 in re the above matter stating that the Court had denied the petition for appeal but that the appellants could amend their petition rec'd.

Mr. Bernards is seriously ill and the Doctor in charge of him has directed that he be not disturbed for a few days.

It is possible to grant some additional time? I can furnish you with the affidavit of the attending physician if you desire.

I am yours very truly,

(Signed) Mrs. Lena Bernards, One of the Bankrupts.

P. S.—Inclosed find Air mail self addressed envelope.

Time to file amended petition showing additional facts extended to and including June 30, 1938.

(Signed) Curtis D. Wilbur, Senior United States Circuit Judge.

[File endorsement omitted.]

[fol. 209]

[File endorsement omitted]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT

[Title omitted]

SUPPLEMENT TO BANKRUPTS' PETITION FOR LEAVE TO APPEAL
UNDER BANKRUPTCY ACT, SECTION 24 (b)—Filed June 23,
1938

To the Honorable Judges of the United States Circuit Court
of Appeals for the Ninth Circuit:

Your petitioners, the above named bankrupts, pursuant
to a request of this Court supplement their petition by
the following facts:

I

That your petitioners are bona-fide farmers within the
meaning of Section 75 of the Bankruptcy Act and that their
entire life savings were invested in the real property, farm
and household equipment, which personal property both real
and personal was necessary to carry on their occupation as
farmers, and that one of your petitioners, Martin J. Ber-
nards, has been a farmer all of his life, commencing at
the age of sixteen, and has lived on a farm and tilled the
[fol. 210] same until he was dispossessed in June, 1935.
Reference is hereby made to a copy of the petitioners'
schedule of personal property filed in their debtor proceed-
ings. The same is attached hereto and made a part hereof
the same as if incorporated herein.

II

Your petitioners, in support of Assignment of Errors,
paragraph 1, allege that they filed their petition as debtors
under the farm bankruptcy Act and that during the said

debtor proceedings no creditor, or other person, ever made any objections to your petitioners not being bona-fide farmers and entitled to all of the benefits of the Act, and that afterward your petitioners were duly adjudicated bankrupts and requested in their petition that they be allowed all of the benefits of the said bankruptcy Act, and that during the said bankruptcy proceedings no testimony was ever taken, or objection made, by any creditor, or other person, to the fact that your petitioners were not bona-fide farmers, and that your petitioners have been, at all times, entitled to the full benefits of the Act.

III

For facts in support of paragraph II of your petitioners Assignment of Errors, allege, that the Court had no jurisdiction to dismiss bankrupts' petition filed January 15, 1937, for the reason that your petitioners had been duly adjudicated bankrupts, and that the said adjudication had not been set aside or vacated.

[fol. 211]

IV

Your petitioners allege facts in support of Assignment of Errors, paragraph 111, that your petitioners' motion filed April 13, 193^o, asking the Court to set aside all orders of the Court made in derogation of bankrupts' rights, under Section 75 and particularly sub-section 's' of Section 75, for the reason that said motion requested the Court and the conciliation commissioner to carry out the mandatory provisions of the Act.

V

Your petitioners, for facts in support of paragraph IV of their Assignment of Errors allege that the Court erred in decreeing the title of real property situated in Washington county to be in Catherine Collins, for the reason that the said sale was had in a state court which had no jurisdiction of the said real property. This property was subject to the exclusive jurisdiction of the bankruptcy Court and could not be delegated.

VI

Your petitioners, for facts in support of paragraph V of Assignment of Errors allege the same facts as set forth in the above paragraph.

VII

Your petitioners, for facts in support of paragraph VI of Assignment of Errors allege that the Court erred in ratifying and confirming the actions of the trustee, for the reason that the said Act does not provide for a trustee.

VIII

Your petitioners allege, for facts in support of Assignment of Errors, paragraph VII, the same facts as set forth in the above paragraph.

IX

Your petitioners, for facts in support of Assignment of Errors, paragraph VIII, allege that the Court had no jurisdiction to affirm the order of the conciliation commissioner made on the 8th day of August, 1936, which order denied the bankrupts the benefits of the Act, for the reason that the said conciliation commissioner never held any hearings nor took any testimony during the debtor proceedings or afterwards, on which to base the said order.

X

Your petitioners, for facts in support of paragraph IX of their Assignment of Errors, allege that the Court erred by ordering a distribution of funds in the hands of the trustee for the reason that Section 75 of the Bankruptcy Act does not provide for a trustee and that his acts were wholly void.

XI

Your petitioners, for facts in support of paragraph X of their Assignment of Errors allege that the Court erred in denying the petitions of the bankrupts filed on January 4, 1937, asking to be allowed to proceed under the provisions of Section 75, subsection 's' for the reason that your petitioners were duly adjudicated bankrupts under Section 75 and that their adjudication had never been attacked, set aside or modified.

[fol. 213]

XII

Your petitioners, for facts in support of paragraph XI of their Assignment of Errors, allege that the Court erred

in denying bankrupts' petition of January 15, 1937, which petition asked for a review of the proceedings and for the benefits of the Act. Your petitioners had, at that time, been denied all of the provisions of the said Act and although they were entitled to have been put in possession of their property, both real and personal and to a three year rental stay, these benefits had all been denied them.

XIII

Your petitioners, for facts in support of paragraph XII of their Assignment of Errors allege that the Court erred in making the said order and decree of May 10, 1938, which order by its force and effect denied the bankrupts all of the provisions of Section 75 and which denial violated the due process clause of the fourteenth amendment of the Constitution of the United States.

XIV

Your petitioners, for facts in support of paragraph XIII of their Assignment of Errors allege that the Court erred in making an order on May 10, 1938, affirming the orders of the conciliation commissioner for the reason that all orders of the conciliation commissioner were contrary to Section 75 of the Bankruptcy Act and that the said commissioner was without jurisdiction to remove your petitioners [fol. 214] from all of the benefits of the said Act.

Martin J. Bernards, One of the Bankrupts.

Subscribed and sworn to before me this 21 day of June, 1938. Harry Frazer, Notary Public for Oregon. My Commission Expires Nov. 17/1941.
(Seal.)

[fol. 215] SCHEDULE "B" TO SUPPLEMENT TO PETITION

(5)

Personal Property

450 Tons of Chopped Hay.

2 Tons of Vetch Seed.

110 Tons of Baled Straw.

4 Horses.

1 Cow.

225 Ewes.

260 Lambs.

Said ewes and lambs mortgaged to Peter Bergersen.
Amount due on note and mortgage, \$1,340.82.

1 Caterpillar 34 Combine, with pickup attachment.

1 TA 40 International Tractor, Crawler Type.

1 22-36 International Tractor.

1 15-30 International Tractor.

2 Big Six McCormick-Deering Mowers.

1 12-foot McCormick-Deering Rake.

1 4-bottom 16-inch John Deere Tractor Plow.

1 3-bottom 14-inch John Deere Tractor Plow.

1 Papee 3-row Hay Cutter.

1 28-foot Corrugated Roller.

1 22-foot Spring Tooth Harrow.

1 33-foot Six Section Peg Tooth Harrow.

1 10-foot Van Brunt Drill.

1 7-foot Wooden Roller.

2 8-foot 22 inch Tandem Covercrop Discs.

1 10-foot 16-inch Tandem Tractor Disc.

[fol. 216] 1 14-inch Walking Plow.

1 16-inch Walking Plow.

1 16-foot Land Plaster Seeder.

1 Hay Tedder.

1 3-horse McCormick-Deering Cultivator, 2-row.

2 2-horse Cultivators.

2 1-horse Cultivators.

1 1-horse Clod Smasher.

1 1-horse Weeder.

1 set Chop Tools.

1 Clipper Power Fanning Mill.

1 Hand Fanning Mill.

2 Sets of Harness.

3 Wagons.

3 Hay Racks.

1 3½ Bain Wagon and Box.

1 Universal Logging Trailer.

2 5-ton White Trucks, 1925 Models.

1 3½-ton White Truck, 1921 Model.

2 3-ton Packard Trucks, 1918-1919 Models.

1 1928 Buick Sedan Automobile.

1 1933 Ford Pickup Automobile.
 1 2300-gallon Gasoline Tank.
 1 5000-gallon Gasoline Tank.
 1 11x12 Fairbanks-Morse Air Compressor.
 1 Air Tank, 18 inches by 6 feet.
 1 Upright Steam Boiler, 6 horse, in possession of Portland Machinery Co.
 [fol. 217] 1 Fodder Chopper.

1 New Fertilizer Spreader, purchased on conditional sales contract from John Deere Plow Co., balance due \$140.00.

1 used Fertilizer Spreader.

1 Blower, at American Sheets Metal Works, Portland, Oregon.

Water Works Extension Bonds of City of Orenco of Tualatin Valley, a municipal corporation of the State of Oregon, as follows: Nos. 6, 7, 8, 9, 10, 11, and 41, for \$1,000.00 each; \$400.00 has been paid on account of No. 6, leaving a balance of \$600.00; together with coupons attached to each bond. Said bonds are pledged with United States National Bank of Portland (Oregon) as security for payment of loan of M. R. Johnson to said United States National Bank of Portland (Oregon).

[fol. 218] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT

ORDER SUBMITTING PETITION FOR ALLOWANCE OF APPEAL—
June 2, 1938

Ordered petition for allowance of appeal herein under section 24b of the Bankruptcy Act submitted to the court for consideration and decision.

[fol. 219] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT

ORDER ALLOWING APPEAL—July 9, 1938

Upon consideration of the petition of Martin J. Bernards and Lena Bernards, for allowance of appeal herein under section 24b of the Bankruptcy Act, filed June 1, 1938, and of the assignments of error thereon, filed therewith, and of

the supplement to said petition, filed June 23, 1938, and by direction of the court,

It Is Ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the orders of the District Court of the United States for the District of Oregon made and entered on the 10th day of May, 1938, be, and the same hereby is allowed, conditioned upon the giving of a cost bond in the sum of Two Hundred and Fifty Dollars (\$250.00) with good and sufficient security, within ten days from date.

It Is Further Ordered that if an appeal has been heretofore allowed in this cause by said District Court, and a cost *cost* bond given on such appeal, then no additional cost bond need be given on this appeal.

[fols. 220-221] Citation in usual form showing service on M. R. Johnson et al. filed July 20, 1938, omitted in printing.

[fol. 222] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT

ORDER GRANTING APPLICATION OF APPELLANTS TO PROSECUTE
APPEAL IN FORMA PAUPERIS—August 15, 1938

Upon consideration of the application of appellants, filed July 18, 1938, for leave to prosecute appeal in the above-entitled cause in forma pauperis, without the prepayment of costs, and good cause therefor appearing, It Is Ordered that said application be, and hereby is granted.

[fol. 223] [File endorsement omitted]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT

[Title omitted]

MOTION FOR WRIT OF CERTIORARI TO CORRECT DIMINUTION OF
THE RECORD—Filed November 21, 1938

To the Honorable Chief Justice and Associate Justices of
the above entitled court:

M. R. Johnson and The United States National Bank of
Portland (Oregon), appellees in the above entitled cause,

suggest to this court that, in the above cause which is pending in this court on appeal, the transcript of record heretofore duly certified and filed herein is incomplete, and that there is a diminution of the record in said cause in that the papers hereinafter described, which are a part of the record in said cause and are important for a proper understanding of the questions raised in this court, are not included in and made a part of said transcript of record.

Wherefore, appellees move that this court issue its writ of certiorari directed to the District Court of the United States, for the District of Oregon, commanding that court to certify and send to this court said papers which are of record in that court in this cause and which are particularly described as follows:

(1) paragraphs I to XXI of order of Conciliation Commissioner dated August 8, 1936, omitting therefrom copy of foreclosure decree rendered by Circuit Court of the State of Oregon, for Washington County, and also omitting copy of order set forth on page 17 of said order:

(2) amendment of December 2, 1914 to rule 1 of bankruptcy rules of United States District Court, for the District of Oregon.

[fol. 224] Duly certified copies of said papers are attached hereto and by this reference made a part hereof.

In support of this motion, said appellees respectfully show that the portion of the order of August 8, 1936 hereinbefore described contains findings of fact material to issues which will be raised on this appeal, to wit, the ability of the bankrupts to rehabilitate themselves financially and the compliance of the bankrupts with the provisions of section 75 of the Bankruptcy Act as amended and with the conditions precedent to the allowance of relief to them under subsection (s) of said section and said appellees further show the court that said portion of said order was inadvertently omitted from their counterpræcipe heretofore filed with the clerk of said District Court upon the mistaken assumption that the matters set forth therein were duplicated in other portions of the record.

The copy of the above-mentioned court rule was omitted from said counterpræcipe on the theory that this court would take judicial notice thereof, but said appellees have

since been advised that there is a doubt as to this and therefore desire its incorporation in the record.

Dated at Portland, Oregon, this 3d day of November, 1938.

Platt & Black, Counsel for appellees.

[fol. 225] *Duly sworn to by A. D. Platt. Jurat omitted in printing.*

[fol. 226] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE OF APPELLEES FOR ADDITIONAL RECORD—Filed
October 24, 1938

To the clerk of the above entitled court:

You are hereby requested, in aid of an application of the appellees for a writ of certiorari to correct diminution of the record herein, to prepare a supplementary transcript of record on the appeal herein to the United States Circuit Court of Appeals, for the Ninth Circuit, in addition to the portions of the record already indicated by appellants and appellees herein to be included in said transcript, and to include therein the following:

(1) paragraphs I to XXI of order of Conciliation Commissioner dated August 8, 1936, omitting therefrom copy of foreclosure decree rendered by Circuit Court of the State of Oregon, for Washington County, and also omitting copy of order set forth on page 17 of said order;

(2) amendment of December 2, 1914 to rule 1 of bankruptcy rules of United States District Court, for the District of Oregon.

Dated at Portland, Oregon, this 24th day of October, 1938.

George R. Bagley, Wm. L. Brewster, Platt & Black,
Attorneys for Appellees.

I hereby certify that I served the within praecipe on Martin J. Bernards and Lena Bernards, appellants herein, by mailing a true copy of the same this 24th day of October, 1938, to each of them at Beaverton, Oregon.

A. D. Platt, of Attorneys for Appellees.

[File endorsement omitted.]

[fol. 227] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

B-19268

In the Matter of MARTIN J. BERNARDS and LENA BERNARDS,
Bankrupts

DECREE—Filed August 8, 1936

Now at this time this matter coming on for hearing upon the petition of the bankrupts filed herein on the 15th day of July, 1936, and the answer thereto and cross petition filed herein on behalf of M. R. Johnson and the United States National Bank of Portland, (Oregon), a corporation, and the reply to said answer and petition, the above named bankrupts appearing in person and by Glenn B. Jack, their attorney, and the said M. R. Johnson and The United States National Bank of Portland, (Oregon), a corporation, appearing in person and by E. B. Tongue, their attorney, and the court having heard all the evidence introduced by and on behalf of the said bankrupts, and the said M. R. Johnson and The United States National Bank of Portland (Oregon), a corporation, and the admissions of the bankrupts, and the arguments of Counsel, and after having made an examination of the records herein, and from said petition, answer, reply and other evidence introduced herein on behalf of the respective parties, it appears to the Court:

I

That on the 4th day of April, 1930, the above named [fol. 228] bankrupts made, executed and delivered to M. R. Johnson their certain promissory note in the sum of \$70,000.00 due on or before four months after date, and that in order to secure payment of said note, principal and interest and costs and disbursements and attorneys' fees as therein provided, the said bankrupts made, executed and delivered to the said M. R. Johnson their certain indenture of mortgage wherein and whereby they conveyed to the said M. R. Johnson, as security aforesaid, all the real property described in said mortgage and designated therein as Tracts Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16, and which is described in that certain decree, a copy of which is hereinafter set forth; that said mortgage was duly filed

for record and duly recorded on the 4th day of April, 1930, in Book 114, at page 521 of the Records of Mortgages for Washington County, Oregon; that thereafter, a portion of said property was released from the effects of said mortgage in order to enable the said bankrupts to obtain a loan of \$3000.00 thereon from the World War Veterans State Aid Commission and said bankrupts, having secured a loan from said Commission for said amount, in order to secure payment thereof, made, executed and delivered to the said Commission their certain indenture of mortgage wherein and whereby they conveyed to said Commission said tract of land designated as tract No. 16, and which mortgage is recorded in Book 117, page 324, of the records of Mortgages for Washington County, Oregon; and that thereafter, to-wit: on the 24th day of February, 1931. Pursuant to agreement, [fol. 229] said bankrupts made, executed and delivered to the said M. R. Johnson, in order to secure said note herein mentioned of \$70,000.00, a second mortgage upon said tract No. 16, and which mortgage was duly filed for record on the 1st day of August, 1932, and duly recorded in Book 120 at page 517 of the Records of Mortgages of Washington County, Oregon, and that the land described in said decree and designated therein as Tract No. 16 is subject to the said Johnson mortgage only as a second lien thereon; that \$45,500.00 of the said \$70,000.00 represented by said note and mortgage was advanced to said bankrupts for the purpose of and was used by said bankrupts for the purpose of purchasing all the lands described in said decree, copy of which is hereinafter set forth, except the land therein designated as Tract No. 15; that said two mortgages executed by said bankrupts to and in favor of the said M. R. Johnson was assigned by the said Johnson to The United States National Bank of Portland (Oregon), a corporation, as collateral security to secure a loan made by the said Bank to the said M. R. Johnson and which sum so loaned By Said Bank to said M. R. Johnson was loaned to said bankrupts and is a part of and embraced in the said note of \$70,000.00.

II

That thereafter, to-wit: on the 6th day of April, 1934, a suit in equity was instituted in the Circuit Court of the State of Oregon for Washington County wherein M. R. Johnson and The United States National Bank of Portland

(Oregon), a corporation, were plaintiffs, and the said bankrupts, Martin J. Bernards and *and* Lena Bernards, his wife, [fol. 230] and others were defendants, for the purpose of securing a judgment upon said note for the sum of \$70,000.00 and the foreclosure of said mortgages given to secure the same and that after trial had thereon, and on the 11th day of July, 1934, a decree was rendered and entered in said court and cause, a copy of which decree, omitting the title of the court and cause is in words and figures as follows, to wit:

III

That thereafter, towit: on the 29th day of May, 1935, an execution, decree and order of sale was issued out of and under the seal of said Court directing the Sheriff of Washington County, Oregon, to sell all the real property therein described, and described in said decree, and that thereafter, towit: on the 29th day of June, 1936, pursuant to said execution, judgment, decree and order of sale the said Sheriff of Washington County, Oregon, sold all the real property described in said execution and in said decree, hereinabove set forth, to the said M. R. Johnson and the United States National Bank of Portland (Oregon), a corporation, for the sum of \$65,075.00.

IV

That thereafter the said bankrupts filed objections to the confirmation of said sale, and that upon a full hearing before said Court, said Court overruled said objections to the confirmation of said sale, and upon the 20th day of July, 1935, made and entered an order in said foreclosure suit in all respects confirming and approving said sale.

[fol. 231]

V

That thereafter, towit: on the 25th day of January, 1936, a writ of assistance was issued by the Clerk of said Circuit Court pursuant to an order of said Court, directing the Sheriff of Washington County, Oregon, to dispossess the bankrupts of said property described in said decree.

VI

That thereafter, towit: on the 25th day of January, 1936 the said Sheriff of Washington County, Oregon, pursuant

to said writ of assistance issued and delivered to him out of said Court, on the 25th day of January, 1936, disposed the said bankrupts of said property and turned over the possession thereof to the said M. R. Johnson and The United States National Bank of Portland, (Oregon), who are now and ever since said date have been in possession of said real property.

VII

That at the time of the sale of said real property, as hereinabove set forth, on said execution in said foreclosure suit, the Sheriff of Washington County, Oregon, delivered [fol. 232] to the said M. R. Johnson and The United States National Bank of Portland, (Oregon), a corporation, Sheriff's certificate of sale to said real property described in said decree and in accordance with the laws and statutes of the State of Oregon; that upon the 1st day of July, 1936, no redemption of said real property from said Sheriff's sale having been made, and upon presentation of said certificate of sale to said Sheriff, the said Sheriff of Washington County, Oregon, pursuant to the laws and statutes of the State of Oregon in such cases made and provided, made, executed and delivered to M. R. Johnson and The United States National Bank of Portland (Oregon), a corporation, a sheriff's Deed wherein and whereby said Sheriff conveyed to the said M. R. Johnson and The United States National Bank of Portland (Oregon), a corporation, all the real property described in said decree, a copy of which is hereinabove set forth, and that said deed was duly filed for record on the 1st day of July 1936, in the office of the recorder of conveyances of Washington County, Oregon, and duly recorded in book 159 at page 406 of the records of deeds for said County, and that the said M. R. Johnson and The United States National Bank of Portland (Oregon), a corporation, are now and ever since the 1st day of July, 1936, have been the owners in fee simple of said lands described in said decree except tract designated as tract No. 15, and that the said M. R. Johnson and the United States National Bank of Portland (Oregon), a corporation, are now and ever since the 29th day of June, 1935, have been in possession of all agricultural property set forth and described in said decree except tract No. 15, containing approximately 80 acres.

VIII

That upon the 31st day of October, 1929, the said Martin J. Bernards and Lena Bernards, made, executed and delivered to Catherine Collins their certain promissory note in the sum of \$10,300.00 and in order to secure the payment thereof, made, executed and delivered to the said Catherine Collins their certain mortgage wherein and whereby they conveyed to the said Catherine Collins, as security aforesaid, all the land described in said decree as tract No. 15; that thereafter the said Catherine Collins instituted a suit in equity in the Circuit Court of the State of Oregon for Washington County against Martin J. Bernards and Lena Bernards, the above named bankrupts, and M. R. Johnson and The United States National Bank of Portland, (Oregon), a corporation, and others to foreclose said mortgage, and thereafter, on the 12th day of July, 1935, the said Circuit Court made, rendered and entered its decree in said cause wherein the said Catherine Collins was awarded a judgment against the said Martin J. Bernards and Lena Bernards in the sum of \$8284.00 with interest thereon at the rate of $5\frac{1}{2}\%$ per annum since October 31, 1935, together with \$150.00 attorney's fees and costs and disbursements taxed at \$27.65 and foreclosing said mortgage; that on the 20th day of July, 1935, there was issued out of said Circuit Court in said foreclosure suit an execution, and thereafter, to wit: on August 26th, 1935, pursuant to said execution, the Sheriff of Washington County, Oregon, sold said land, [fol. 234] designated as Tract No. 15, to Catherine Collins for the sum of \$10,689.35, and that all the right, title and interest of the said M. R. Johnson and The United States National Bank of Portland (Oregon), a corporation, was foreclosed in said suit except the statutory right of redemption of the said Johnson and the said Bank which has since expired without any redemption having been made.

IX

That since the date of the execution of said mortgage executed to the said M. R. Johnson and The United States National Bank of Portland (Oregon), a corporation, and pursuant to tax foreclosure decree, deeds have been executed and delivered by proper authority to the following described lands, to wit:

Block 23, 1st Addition to Orenco;

Block 22, 1st Addition to Orenco;

Lots 3, 4, 5 and 6, Block 24, 1st Addition to Orengo;

Lot 5 and 6 Block 1, Orengo Townsite;

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 Block 15, 1st Addition to Orengo;

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 Block 16, 1st Addition to Orengo;

Lots 1, 2, 3, 4, 5, 6 and 7, Block 17, 1st Addition to Orengo;

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, Block 18, 1st Addition to Orengo;

Lots 6, 7, 8, 9, and 10, Block 19, 1st Addition to Orengo;

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, Block 20, 1st Addition to Orengo;

and also 164.76 acres of the agricultural land covered by the mortgages of said M. R. Johnson and The United States National Bank of Portland (Oregon), a corporation, was sold to Washington County, Oregon, on the 29th day of April, 1933, pursuant to a decree in a tax foreclosure suit in which Martin J. Bernards and Lena Bernards were defendants, and which lands were conveyed to the said Washington County, Oregon by deed executed to said County by [fol. 235] the Sheriff of Washington County, Oregon, and which was filed for record on June 10, 1933, and duly recorded in book 151, page 330, of the records of deeds for said County and State.

X

That thereafter on the -- day of ---, 1935, a tax foreclosure suit was instituted against the said Martin J. Bernards and Lena Bernards for taxes for the year 1930 and prior years to foreclose taxes upon the following lands covered by said decree, as hereinabove set forth, to wit:

165.68 acres in Sections 27 and 34, Township 1 North, Range 2 West, W. M. as described in Volume 14, page 36, deed records and 8.07 acres as shown by survey. Surveyor's Office, Washington County, Oregon, less 1.82 acres for road, less 76.73 acres as described in Vol. 140 page 578, Deed Records of Washington County, Oregon.

74.18 acres as by survey of Wilkes in Sec. 34 T 1 N R 2 W. W.M. as described in Vol. 144 page 8, Deed Records of Washington County, Oregon.

161.04 acres by Wilkes Survey in NW $\frac{1}{4}$ Sec. 35, NE $\frac{1}{4}$ Sec. 34; SW $\frac{1}{4}$ Sec. 26 and SE $\frac{1}{4}$ Sec. 27, all in T1N.R. 2 W.

W.M. as described in Vol. 144, page 8, Deed Records of Washington County, Oregon.

Orengo, Lots 1, 2 and 3 in Block 2; and W $\frac{1}{2}$ of Lot 5 and all of Lot 6, Block 2.

XI

That there has been released from the effects of said mortgages executed by said bankrupts to the said M. R. Johnson those certain tracts or parcels of land described in Paragraph XI of the petition and answer of the said M. R. Johnson and The United States National Bank of Portland (Oregon), a corporation, on file herein.

[fol. 236]

XII

That all of said lands described in said mortgages, and in said decree as hereinabove set forth, except parcel No. 15, were formerly owned by the Oregon Nursery Company, and on the 23rd day of February, 1929, the said lands were sold by the Sheriff of Washington County, Oregon, pursuant to a decree of the Circuit Court of the State of Oregon for Washington County, to satisfy a judgment and decree of foreclosure for the payment of bonds outstanding against the Oregon Nursery Company, and at said sale and after competitive bidding Block 21, First Addition to Orengo was sold to A. C. Burdette for the sum of \$10.00 and all remaining property, pursuant to said decree, was sold to Mary Smidt for the sum of \$45,500.00 and thereafter, to-wit: on or about the 4th day of April, 1930, the said Mary Smidt sold, assigned and transferred her said Sheriff's certificate of sale to the said Martin J. Bernards for the sum of \$45,500.00.

XIII

That upon the 10th day of August, 1934, the said Martin J. Bernards and Lena Bernards filed in the United States District Court for the District of Oregon their certain petition pursuant to Section 75 of the Bankruptcy Act for the purpose of offering to their creditors a composition of, or extension of time, for the payment of their debts and that said petition was on the 10th day of August, 1934, approved by the United States District Court for the District of Oregon, and that said petition was thereafter referred for further proceedings to A. W. Hoffman, the then duly appointed qualified and acting Commissioner under said

Section 75 of the Bankruptcy Act for the County of Washington, State of Oregon.

XIV

That on September 5, 1934, and pursuant to a notice published by A. W. Hoffman, Conciliation Commissioner for Washington County, Oregon, as aforesaid, the first meeting of the Creditors of the said Martin J. Bernards and Lena Bernards was heard at the County Court House in Washington County, Oregon, and at said time the said Martin J. Bernards and Lena Bernards presented in writing as their proposal for composition or extension a purported proposal, the body of which omitting the heading and signatures was and is as follows:

"We, Martin J. Bernards and Lena Bernards, the debtors above named, submit the following proposal for composition of and extension of debts in the above entitled cause:

1. That the debts secured by mortgages on real property be composed by Federal Financing through loans secured from the Federal Land Bank in an amount satisfactory to the mortgagees and mortgagors.

2. That debts secured by personal property be paid in full. The moneys derived from these loans were used principally for seeding and harvesting.

3. That unsecured debts be paid in full on or before April 1, 1935, except that we request to be permitted to pay the claim of Charles Kyler in the sum of \$100.00; Winifred Wible in the sum of \$75.00; Ted Crane in the sum of \$23.50 and Gordon Vikan in the sum of \$22.00. The claims last mentioned are for labor performed on the farm during the cultivation and harvesting of the present crop. Dated September 5th, 1934."

That said debtors did not have at the time of said written [fol. 238] offer any application pending with any Federal financing agency or corporation for any loan whatsoever and that the application to the Federal Land Bank of Spokane, Washington, by the said bankrupts for a loan had been refused.

XV

That said Martin J. Bernards and Lena Bernards failed to secure the written consent of the majority of their

creditors, either in number or amount, to their co-called proposal of composition or extension, and said Conciliation Commissioner made his report to the above entitled court that no composition or extension could be effected.

XVI

That thereafter, and on the 27th day of October, 1934, the said Martin J. Bernards and Lena Bernards applied to the above entitled court for an order again referring said matter to said A. W. Hoffman, Conciliation Commissioner, and pursuant thereto an order was made re-referring said cause, and that a meeting was thereafter advertised by said A. W. Hoffman, Conciliation Commissioner, to be held on December 4, 1934, at which meeting the said Martin J. Bernards and Lena Bernards submitted in writing a purported offer of composition or extension, the body of which, omitting the heading and signatures, was and is as follows:

"Offer \$45000.00 for mortgage on our entire Orenco farm consisting of approximately 760 acres.

From this amount will be deducted the 5% of the amount Land Bank Loan, amounting to approximately \$1875.00.

[fol. 239] There will be deducted also the taxes now due of approximately \$15000.00 less the value of the Orenco bonds of about \$7000.00.

The Chattel Mortgage principal in full April 1st.

To common creditors, we have on hand 600 tons of No. 1 chopped hay and some grain feed which we wish to market to the best interests of common creditors.

To J. M. Vanderzanden a real estate mortgage in a like proportion.

We ask consent of creditors to the immediate payment of \$75.00 to Winifred Waible, \$60.00 to Charles Kyler; \$22.00 to Gordon Vikan and \$23.00 to Ted Crane for labor performed in the production of the last year's crops."

That at the time of said written offer of composition, as aforesaid, the above named Martin J. Bernards did not have the sum of \$45,000.00 less 5% thereof to be deducted therefrom, or any offer or commitment for a loan of said sum to them.

XVII

That prior to the time said two written offers of composition and extension were made by the said Bankrupts to their

creditors as hereinabove set forth, the said Martin J. Bernards had received from the Federal Land Bank of Spokane a letter bearing date of May 7, 1934, which omitting the heading and ending, is in words and figures as follows:

"After fair and reasonable appraisal of your property and a careful consideration of your loan application, we regret to advise that we cannot grant your request.

It is not indicated that this property has been operated to any advantage and there is no assurance that the returns therefrom in the future would exceed those of the past.

It appears that you have a very small cash investment and equity in this property and your indebtedness is so excessive that a loan based upon your loan value would not approach an amount that would meet your needs and be of [fol. 240] any assistance to you in settling that indebtedness. Part of the farm is foul with Morning Glory over which suitable control methods have not been set up.

We regret our inability to be of service to you but in view of the above mentioned adverse factors and in view of the various surrounding factors disclosed in this case we do not see our way clear to make a commitment of any amount."

and which letter was received by said bankrupts in May, 1934.

XVIII

That the said Martin J. Bernards and Lena Bernards failed to secure the written consent of a majority of their creditors, either in number or amount, to said purported offer of composition or extension, and thereafter the said A. W. Hoffman, Conciliation Commissioner, again reported to the above entitled court that no composition or extension could be effected.

XIX

That on the 19th day of December, 1934, the said Martin J. Bernards and Lena Bernards filed in the above entitled court their amended petition to be adjudged bankrupts under Section 75 of the Bankrupt Law, and on the same date an order of adjudication was made therein adjudging the said Martin J. Bernards and Lena Bernards to be bankrupts, and attached to said petition was schedule of their debts, and which schedule disclosed that the debts of said bankrupts, aside from their indebtedness to the said M. R.

Johnson, and the said Catherine Collins, amounted to the sum of \$——.

XX

That thereafter, towit: on the 28th day of June 1935, the [fol. 241] said Martin J. Bernards and Lena Bernards applied to the above entitled court for an order referring for the third time said matter to A. W. Hoffman, Conciliation Commissioner, and said application was denied by an order of the same date, a portion of which order is in words and figures as follows, towit:

"And it appearing to the Court that said debtors have heretofore been adjudged bankrupts, and their bankruptcy proceeding is now pending before Willard L. Marks, Referee in Bankruptcy.

And it further appearing that the secured creditor has already been delayed approximately one year by proceedings under these acts,

It is Ordered that said petition be and the same hereby is denied."

XXI

That on the 24th day of August, 1935, an order was made and entered by the Honorable R. Frank Peters, Judge of the Circuit Court of the State of Oregon for Washington County, in the suit instituted by the said M. R. Johnson and The United States National Bank of Portland (Oregon), a corporation, against said bankrupts and others to foreclose said mortgage, directing the Clerk of said Court to issue a writ of assistance, and pursuant thereto a writ of assistance was issued directed to J. W. Connell, Sheriff of Washington County, Oregon, to eject and dispossess the said Martin J. Bernards and Lena Bernards from all the real property described in said bankrupts schedule and designated as Parcels Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16, and that thereafter, towit: on the 3rd day of October, 1935, upon an application made in the above entitled court by said bankrupts the said Court made its temporary restraining order, restraining the Sheriff of Washington County, [fol. 242] Oregon, from executing said writ of assistance, and thereafter, on the 18th day of December, 1935, upon a hearing before the above entitled court to show cause why said temporary restraining order should not be made permanent or dissolved, the court made and entered an or-

der, a copy of which omitting the title of the court and cause, is in words and figures as follows, towit:

XXII

That since the filing of said schedules by the above named bankrupts, said bankrupts have used and converted to their own use much of the property shown in said schedules and have received from a portion of said personal property an amount in excess of \$5000.00, and the remainder of said personal property is fast depreciating in value and will be lost or destroyed unless a trustee is appointed to take possession thereof, and that there is no reasonable hope of the rehabilitation of said bankrupts within the meaning of said section 75 of the Bankrupt Laws of the United States of America.

Omitted by direction of Appellees.

Dated this 8th day of August, 1936.

H. A. Kuratli, Conciliation Commissioner.

[File endorsement omitted.]

[fol. 242a] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDMENT TO RULES—Filed December 2, 1914

Now, at this time, it is ordered that the following be, and the same is hereby adopted as a rule of this court, towit:

In all cases in which a review by this court of the action or decision of the referee in bankruptcy is sought, the petition for review must be filed with the referee within 20 days from the date of the order or action sought to be reviewed. And thereupon, the referee, whose action or decision is sought to be reviewed shall, within ten days from the date the petition for review is filed with him, file in this court all the record and papers, or certified copies thereof, necessary to a hearing in this court.

Dated Dec. 2, 1914.

Chas. E. Wolverton, R. S. Bean, Judge.

[fol. 243] Clerk's Certificate to foregoing papers omitted in printing.

(Endorsed:) Motion for writ of certiorari for diminution of record. Filed Nov. 1, 1938. Paul P. O'Brien, Clerk.

[fol. 244] [File endorsement omitted]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT

[Title omitted]

OBJECTIONS TO MOTION FOR WRIT OF CERTIORARI FOR DIMINU-
TION OF THE RECORD—Filed November 21, 1938

To the Honorable Judges of the Above Entitled Court:

Comes now the appellants and object to the motion of appellees for diminution of the record, on the grounds and for the reasons:

1. That the appellees have already been allowed to file a supplemental transcript of the record. Equity Rule 75 (a) provides that the appellees shall have ten days in which to serve and file a designation of additional portions of the record proceedings and evidence to be included.

2. That the request to include Paragraphs I to XXI of the order of the Conciliation Commissioner, dated August 8, 1936, purposely omitted therefrom copy of the foreclosure decree rendered by George R. Bagley, Judge of the Circuit Court of the State of Oregon for Washington County. This decree shows an entry of a deficiency judgment; it shows that the pledge by the appellant Martin J. Bernards of Orenco City bonds was and is a valid pledge thereof, but does not show any documentary evidence in support of this [fol. 245] holding; this decree further shows dissolution of a restraining order which Judge Bagley had wrongfully and unlawfully entered on May 6, 1934.

3. Equity 75 (b) provides that if anything material to either party is omitted upon a proper suggestion the omission may be corrected. That the matters contained in said Paragraphs I to XXI of the order of the Conciliation Commissioner dated August 8, 1936, relate principally and particularly to the good faith of the petitioners in making their

offer of compromise while under the debtor proceedings, and is immaterial to either party at this time.

Appellants filed a petition on June 29, 1936, in the Federal Court at Portland, Oregon, which petition asked the Court for an extension of the period of redemption as provided by the new Frazier Lemke Act, and also asked for an order restraining the Sheriff of Washington County from the delivery of a deed. This was heard by Federal Judge James Alger Fee on or about July 2, 1936. Judge Fee in an oral opinion from the bench denied the petition on the ground that he did not have jurisdiction, and for the further reason that the Sheriff was already restrained and had been restrained from the time the President approved the new act. Mr. E. B. Tongue, attorney for the mortgage creditor, M. R. Johnson, requested Judge Fee for the appointment of a trustee. Judge Fee replied: "I do not see how I can give you a trustee, Mr. Tongue, the law does not provide for a [fol. 245a] trustee." Mr. Tongue then raised objections to appellants offer of compromise as not being in good faith. Judge Fee cut him short when he said: "Mr. Tongue, after the farmer files his amended petition it is too late to object to a bad faith proposal." Judge Fee then retired to his chambers, and his bailiff came out and called attorneys E. B. Tongue and Glen R. Jack (who was representing the appellants on that day) back to his chambers. Mr. Jack informed appellants that what happened was as follows: Judge Fee said: "The reason I called you gentlemen into the chambers is because it does not look well for the Court to be arguing with attorneys from the bench. I have now made up my mind about the Frazier Lemke Act. I have crossed the bridge and I am not going to turn back. I may be a stubborn darned fool and then again I may not be. I am holding the Frazier Lemke Act constitutional. Bernards is a farmer; his petition is in order; he is entitled to the benefits of the Act. The proper thing in this case is an order putting the mortgage holder out of there, but I haven't jurisdiction; jurisdiction in the first instance rests with the Conciliation Commissioner, but if he does not act, or if he refuses to act, then I will act."

On July 15, 1936, appellants filed their petition with the Conciliation Commissioner in Washington County, asking him for an order removing the mortgage creditors, M. R.

Johnson, The United States National Bank of Portland and Catherine Collins, off the farm, and for an accounting of the crops that they had taken. Appellees filed an answer to [fol. 246] the petition on July 24, 1936, in which, among other things, they alleged that appellants offer of compromise made during the debtor proceedings was in bad faith. Appellants filed a reply on the morning of August 8, which denied everything in appellees' answering petition which did not conform with appellants original position of July 15th, but appellants set up no particular defense to the allegation of bad faith, for the reason that Judge Fee in the oral order from the bench had held that after a farmer filed his amended petition it is too late to object to a bad faith proposal. This oral order of Judge Fee has the support of the U. S. Supreme Court in *Wright v. Vinton Branch of Mountain Trust Bank*, 57 Sup. Ct. Rep., p. 562, footnote 6, where the court said: "It must be assumed that the situation of the present debtor was not beyond all reasonable hope of rehabilitation, else he could not have qualified to file his petition at the outset."

Had it been in order and necessary these appellants would have set up an adequate and complete defense to the allegations. But the matter of good faith was immaterial then and it is immaterial now. Appellants believe that these additional portions of the record are now at this late date called for to prejudice the Court as to the merits of Appellants' case, because the Appellants have no defense set up in the record, and therefore appellees' motion should be disallowed.

Dated at Portland, Oregon this 17th day of November, 1938.

Martin J. Bernards, Lena Bernards, Appellants.

[fol. 247] *Duly sworn to by Martin J. Bernards. Jurat omitted in printing.*

[fol. 248] IN UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

ORDER OF SUBMISSION—February 21, 1939

Ordered motion of appellees for writ of certiorari for diminution of record presented by Mr. A. D. Platt, counsel

for appellees, and good cause therefor appearing, granted, and that the certified copy of documents attached to said motion be filed as a part of the transcript of record herein.

Further Ordered appeal argued by Mr. Martin J. Bernards, in propriam personam, and by Mr. A. D. Platt, counsel for appellees, and submitted to the court for consideration and decision.

[fol. 249] IN UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Title omitted]

ORDER FOR SUPPLEMENTAL TRANSCRIPT—Filed February 28,
1939

This is an appeal, in forma pauperis, from two orders of the District Court made and entered on May 10, 1938, in the matter of Martin J. Bernards and Lena Bernards, bankrupts, No. B-19268. One of the orders appealed from is labeled "Order and Decree." It recites that this matter came on to be heard upon the motion of Catherine H. Collins and others for an order and decree based upon findings of fact and conclusions of law theretofore made and filed. The findings and conclusions purport to have been made after hearing a petition of the bankrupts filed January 15, 1937, answers thereto filed by Catherine H. Collins and others, and the bankrupts' reply to said answers. The so- [fol. 250] called order and decree grants the motion of Catherine H. Collins and others, and dismisses the bankrupts' petition of January 15, 1937.

The transcript filed here does not include the petition, the answers or the motion above referred to. These portions of the record are essential to a determination of the questions attempted to be raised on this appeal. We assume they were omitted from the transcript by accident or error.

Therefore, it is hereby ordered that these omissions be corrected by supplemental transcript, as provided in Equity Rule 76; that the petition, the answers and the motion above referred to be included in such supplemental transcript; and that appellant shall file, with and in addition to the

original of such supplemental transcript, three legible copies thereof.

(Signed) William Denman, United States Circuit Judge. (Signed) Clifton Mathews, United States Circuit Judge. (Signed) Healy, C. J., United States Circuit Judge.

[File endorsement omitted.]

[fol. 251] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORD-
ING OF DECREE—May 2, 1939

By direction of the Court, Ordered that the typewritten opinion this day rendered by this court in this cause be forthwith filed by the clerk, and that a decree be forthwith filed in said cause and entered in the minutes of this court in accordance with the opinion rendered therein.

[fol. 252] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 8855

MARTIN J. BERNARDS and LENA BERNARDS, Appellants,

vs.

M. R. JOHNSON, CATHERINE COLLINS, THE UNITED STATES
NATIONAL BANK OF PORTLAND and Joseph M. Loomis,
Trustee, Appellees

Appeal from the District Court of the United States for the
District of Oregon

Before Denman, Mathews and Healy, Circuit Judges

OPINION—Filed May 2, 1939

MATHEWS, Circuit Judge:

This appeal is from two orders, both entered on May 10, 1938, in a proceeding under § 75 of the Bankruptcy Act

(11 U. S. C. A. § 203). The principal question is whether appellants, Martin J. Bernards and Lena Bernards (husband and wife), are entitled to possession of the 16 parcels of land hereinafter described.

Appellants commenced this proceeding on August 10, 1934, by filing a petition which stated that they derived their entire income from farming operations; that said operations occurred in Washington County, Oregon; that appellants were unable to meet their debts as they matured; that they desired to effect a composition or extension under § 75 of the Bankruptcy Act; and that the schedules annexed to the petition contained a full and true statement of their debts and an accurate inventory of their property, real and personal. The petition prayed that it be approved by the court, and that proceedings be had in accordance with § 75.

The property listed in appellants' schedules included 16 parcels of land, numbered 1 to 16, inclusive, in Washington [fol. 253] County, Oregon. Long prior to the filing of appellants' petition, parcel 15 had been mortgaged to appellee Catherine H. Collins; all the parcels, including parcel 15, had been mortgaged to appellee M. R. Johnson;¹ the Johnson mortgage, or some interest therein, had been assigned to appellee United States National Bank of Portland (hereafter called the bank); the debts secured by the mortgages had fallen due and were unpaid; suits to foreclose the mortgages had been commenced in a State court of Oregon, and a decree foreclosing the Johnson mortgage had been obtained by Johnson and the bank. Appellee Collins' foreclosure suit was still pending when the petition was filed.

The bankruptcy court, on August 10, 1934, approved the petition and referred the case to a conciliation commissioner. On December 19, 1934, appellants filed an amended petition, stating that they had failed to obtain the acceptance of a majority in number and amount of all creditors whose claims were affected by their composition or extension proposals, and asking to be adjudged bankrupts, pursuant to subsection (s) of § 75.² Thereupon, on December 19, 1934, appellants were so adjudged, and on December 20, 1934, the case was referred to a referee in bankruptcy.

² Frazier-Lemke Act of June 28, 1934, c. 869, 48 Stat. 1299.

¹ As to parcel 15, the Johnson mortgage was subsequent and inferior to the Collins mortgage.

On May 27, 1935, the Supreme Court, in *Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555, held that subsection (s), as it then existed, was unconstitutional. Thereafter, on June 29, 1935, pursuant to the foreclosure decree previously mentioned, parcels 1 to 16, inclusive, were sold by the sheriff and purchased by Johnson and the bank.³ Collins obtained a foreclosure decree on July 9, 1935, and pursuant thereto, parcel 15 was sold by the sheriff and purchased by Collins on August 26, 1935. The sale to Johnson and the bank was confirmed on July 20, 1935. The sale to Collins was confirmed on September 16, 1935. Actual possession of the purchased property was obtained by the purchasers on February 1, 1936, and was at all times thereafter retained by them. The time within which appellant might have redeemed the property expired on June 29, 1936.⁴ There was no redemption. The sheriff made and delivered his deed to Johnson and the bank on July 1, 1936, and to Collins on September 10, 1936.

[fol. 254] On August 28, 1935, after both foreclosure sales had been made, subsection (s) was amended.⁵ As amended, it was held constitutional. *Wright v. Vinton Branch of Mountain Trust Bank*, 300 U. S. 440. It provided:

"(s) Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition and/or extension proposal * * * may amend his petition * * * asking to be adjudged a bankrupt. Such farmer may, at the same time, or at the time of the first hearing, petition the court that all of his property, wherever located, whether pledged, encumbered, or unencumbered, be appraised, and that his unencumbered exemptions, and unencumbered interest or equity in his exemptions, as prescribed by State law, be set aside to him, and that he be allowed to retain possession, under the supervision and control of the court, of any part or parcel or all of the remainder of his property, including his encumbered exemptions, under the terms and conditions set forth in this section. Upon such a request being

³ Subject, as to parcel 15, to the prior rights of appellee Collins.

⁴ Oregon Code, 1930, § 3-505.

⁵ Frazier-Lemke Act of August 28, 1935, c. 792, 49 Stat. 942, 943.

made, the referee * * * shall designate and appoint appraisers * * *. Such appraisers shall appraise all of the property of the debtor, wherever located, at its then fair and reasonable market value * * *.

“(1) After the value of the debtor’s property shall have been fixed by the appraisal herein provided, the referee shall issue an order setting aside to such debtor his unencumbered exemptions, and his unencumbered interest or equity in his exemptions * * * and shall further order that the possession, under the supervision and control of the court, of any part or parcel or all of the remainder of the debtor’s property shall remain in the debtor, as herein provided for, subject to all existing mortgages, liens, pledges, or encumbrances. All such existing mortgages, liens, pledges, or encumbrances shall remain in full force and effect, and the property covered by such mortgages, liens, pledges, or encumbrances shall be subject to the payment of the claims of the secured creditors, as their interests may appear.

“(2) When the conditions set forth in this section have been complied with, the court shall stay all judicial or official proceedings in any court, or under the direction of any official, against the debtor or any of his property, for a period of three years. During such three years the debtor shall be permitted to retain possession of all or any part of his property, in the custody and under the supervision and control of the court, provided he pays a reasonable rental semi-annually for that part of the property of which he retains possession. * * *

“(3) * * * If, however, the debtor at any time fails to comply with the provisions of this section, or with any orders of the court made pursuant to this section, or is unable to refinance himself within three years, the court may order the appointment of a trustee, and order the property sold or otherwise disposed of as provided for in this Act.

“(4) The conciliation commissioner * * * shall continue to act, and act as referee, when the farmer debtor amends his petition * * * asking to be adjudged bankrupt under the provisions of subsection (s) of section 75 of this Act, and continue so to act until the case has been finally disposed of * * *.

“(5) This Act shall be held to apply to all existing cases now pending in any Federal court, under this Act, as well as to future cases; and all cases that have been dismissed * * * because of the Supreme Court decision holding the former subsection (s) unconstitutional shall be promptly reinstated * * *.”

This case had not been dismissed, but was still pending when subsection (s) was amended.

On September 30, 1935, the order of reference dated December 20, 1934, was vacated, and the case was again referred to a conciliation commissioner, who thereafter acted as referee, pursuant to paragraph (4), *supra*.

On July 15, 1936, after the period within which they might have redeemed the above described land had expired, appellants petitioned the commissioner for an order granting them immediate possession, control and management thereof. On August 8, 1936, the commissioner denied the petition and, pursuant to paragraph (3), *supra*, ordered the appointment of a trustee. Accordingly, at a meeting of appellants' creditors on August 29, 1936, appellee Joseph M. Loomis was elected by the creditors and appointed by the [fol. 256] commissioner as trustee in bankruptcy and, on September 3, 1936, gave bond and qualified as such trustee. The commissioner's orders appointing Loomis as trustee and approving his bond were reviewed and, on December 14, 1936, were affirmed by the court. The court's order of December 14, 1936, was not appealed from. The time within which such an appeal might have been taken expired on January 13, 1937. Bankruptcy Act, § 24(c), as amended May 27, 1926 (44 Stat. 665).^a

On January 4, 1937, appellants petitioned the commissioner to remove the trustee and to put appellants “into immediate possession of the whole of their estate.” On January 11, 1937, the commissioner dismissed that petition, on the ground that the issues which it sought to raise had theretofore been determined adversely to appellants.

On January 15, 1937, appellants petitioned the court to reverse the commissioner's orders of August 8, 1936, August 29, 1936, September 3, 1936, and January 11, 1937. Answering the petition, appellees prayed that it be dis-

^a With the amendment of June 22, 1938 (52 Stat. 855), we are not here concerned.

missed; Collins prayed that her title to parcel 15 be quieted; Johnson and the bank prayed that their title to parcel 16 and parcels 1 to 14, inclusive, be quieted; the trustee prayed that acts theretofore done by him be approved, and that he be directed to pay the expenses of administering the bankrupt estate, and to distribute the money then remaining in his hands to creditors whose claims had been presented and allowed.

On April 13, 1938, appellants filed a reply to appellees' answers and filed a motion "to vacate and set aside all orders of [the] court, and of all the Referees and Conciliation Commissioners where it was sought to set aside or delay the carrying out any of the provisions of the Bankrupt Act particularly the provisions of section 75," meaning, evidently, the orders of August 8, 1936, August 29, 1936, September 3, 1936, December 14, 1936, and January 11, 1937.

On May 10, 1938, the court, after hearing the case, made and filed its findings of fact and thereupon entered (1) an [Vol. 257] order⁷ dismissing appellants' petition of January 15, 1937, and granting appellees the relief prayed for in their answers, and (2) an order denying appellants' motion filed April 13, 1938. This appeal followed.

The orders appealed from are based on findings. The evidence on which the findings are based is not in the record. Therefore, we must and do accept the findings as correct. *Bank of Eureka v. Partington*, 9 Cir., 91 F. 2d 587, 590; *Bakersfield Abstract Co. v. Buckley*, 9 Cir., 100 F. 2d 530, 531.

The court found that the land in question was mortgaged, that the mortgages were foreclosed, and that foreclosure sales were made, as stated above, and that there had been no redemption. Consequently, since June 29, 1936, appellants have had no right, title or interest in or to the land, nor has the bankruptcy court had any jurisdiction thereof. Therefore, the court could not properly have granted appellants' petition of January 15, 1937, or their motion of April 13, 1938.

Appellants assume, erroneously, that the foreclosure sales were prohibited by subsection (o) of § 75, 11 U. S.

⁷ This order was labeled "order and decree." It was, in effect, a decree in equity as well as an order in bankruptcy.

C. A. § 203(o). The prohibition in subsection (o) applies only to a period "prior to the confirmation or other disposition of the composition or extension proposal," which period expires when the debtor is adjudged a bankrupt. *Hardt v. Kirkpatrick*, 9 Cir., 91 F. 2d 875, 878. In this case, it expired on December 19, 1934. The "stay" provided for in subsection (s), as amended, is not an automatic stay, but is a judicial stay,⁸ to be granted only upon compliance with specified conditions. Appellants never obtained, and—upon the facts found—were never entitled to, any such stay.

The court found that appellants "have made no attempt to comply with the conditions required of them by the 'Frazier-Lemke' amendment to the Acts of Congress in relation to bankruptcy, necessary to be complied with by them in order to obtain the right and privilege of a three years' stay of enforcement of the obligations owned and held by their creditors and possession of the real and personal property described in the schedules;" that appellants, "at the time of the filing of [their] petition, on December 19th, 1934, and at all times thereafter, have been in truth and in fact beyond all hope of financial rehabilitation;" and [fol. 258] that "the only effect of further proceedings and delays on their behalf in this bankruptcy proceeding will be to postpone the inevitable liquidation of their financial affairs without benefit to them and resulting in great hardship to the creditor."

Thus, in effect, the court found (1) that appellants did not comply with the provisions of § 75, and (2) that they were unable to refinance themselves within three years, or at all. Either of these facts would have warranted denial of the relief sought by appellants. Bankruptcy Act, § 75(s)(3), 11 U. S. C. A. § 203(s)(3); *Wright v. Vinton Branch of Mountain Trust Bank*, supra, p. 462; *Pearce v. Collier*, 3 Cir., 92 F. 2d 237, 238; *Donald v. San Antonio Joint Stock Land Bank*, 5 Cir., 100 F. 2d 312, 314.

Orders affirmed.

Healy, Circuit Judge, concurs in the result.

[File endorsement omitted.]

⁸ *Hardt v. Kirkpatrick*, supra.

[fol. 259] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 8855

MARTIN J. BERNARDS and LENA BERNARDS, Appellants,
vs.

M. R. JOHNSON et al., Appellees

DECREE—Filed May 2, 1939

Appeal from the District Court of the United States for
the District of Oregon

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the District of Oregon, and was duly submitted:

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the orders of the said District Court in this cause be, and hereby are, affirmed with costs in favor of the appellees and against the appellants.

It Is Further Ordered, Adjudged, and Decreed by this Court, that the appellees recover against the appellants for their costs herein expended, and have execution therefor.

[File endorsement omitted.]

[fol. 260] IN UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Title omitted]

ORDER STAYING ISSUANCE OF MANDATE

Upon application of Martin J. Bernards and Lena Bernards, Appellants, and good cause therefor appearing, It Is Ordered that the issuance, under Rule 32, of the mandate of this Court in the above cause be, and hereby is stayed to and including July 15, 1939; and in the event the petition for a writ of certiorari to be made by the Appellants herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate

of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

William Denman, United States Circuit Judge.

Dated: San Francisco, California, May 25, 1939.

[fols. 261-264] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 265] IN UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Title omitted]

MOTION TO RECALL AND WITHHOLD MANDATE—Filed
November 4, 1939

Come now Martin J. Bernards and Lena Bernards, Petitioners herein, and respectfully move the Court that the mandate of this Court lately forwarded to the Clerk of the District Court of the United States for the District of Oregon in the above entitled cause be recalled and held, pending the decision of the Supreme Court of the United States in the case of John Hancock Mutual Life Insurance Company vs. Bartels, Case No. 33, October Term, 1939, set for argument on November 8, 1939, for the following reason and upon the following ground:

1. That said cause now pending in the Supreme Court presents for the determination of said Court issues of law which are directly involved in and controlling over the instant case and which, as Petitioners believe, will be determined in such a manner as to require setting aside the aforesaid mandate and granting Petitioners the relief sought. The issues referred to are whether, under Sec. 75 of the Bankruptcy Act, after adjudication and prior to the entry of a rental stay order, the District Court may find [fol. 266] the bankrupts beyond rehabilitation, whether, after adjudication and prior to the entry of a rental stay order, the creditors may proceed in the State Courts, and whether the provisions of Section 75 of the Bankruptcy Act leading up to the rental stay order are mandatory or discretionary with the District Court.

Dated this 1st day of November, 1939.

(Signed) Martin J. Bernards of Petitioners. A True
Copy: Martin J. Bernards.

[File endorsement omitted.]

[fol. 267] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT

ORDER DENYING MOTION TO RECALL MANDATE—November 6,
1939

Upon consideration of the motion of appellants, filed November 4, 1939, to recall mandate of this court issued herein on October 28, 1939, after denial of petition for writ of certiorari by the Supreme Court of the United States, and to withhold such mandate, etc. and by direction of the Court, Ordered said motion be, and hereby is denied.

[fol. 268] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT

[Title omitted]

MOTION AND PETITION FOR RECALL AND CORRECTION, AMENDMENT, REVISION AND/OR OPENING AND VACATING MANDATE AND JUDGMENT ENTERED THEREON—Filed January 2, 1940

Come now Appellants and respectfully move and petition the Court for the Recall and Correction, Amendment, Revision and/or opening and vacating the Mandate herein, and the Judgment of the District Court of the United States for the District of Oregon entered thereon, upon the following ground and for the following reason:

I

That from the decision of the Supreme Court of the United States in the case of John Hancock Mutual Life Insurance Company vs. Benno Bartels, United States Supreme Court Reporter L. Ed. Advance Opinions, Vol. 84, No. 3, p. 154, decided December 4, 1939, it plainly appears that the decision of this Court in the above-entitled cause rendered May 2, 1939, was and is palpably erroneous in determining that petitioners were not entitled to the relief prayed for, for reasons set forth in the Points, Authorities [fol. 269] and Argument appended hereto, and the sound discretion of this court requires that the mandate and

judgment based upon said decision of May 2, 1939, be vacated and corrected to allow petitioners the relief demanded.

(Signed) Martin J. Bernards, Lena Bernards, Petitioners in pro. per.

Notice

To Appellees M. R. Johnson and the United States National Bank of Portland (Oregon) and Platt & Black and A. D. Platt, their Attorneys, Appellee Catherine Collins and Williams L. Brewster, Her Attorney, and Appellee Joseph M. Loomis, Trustee, and Bagley & Hare and George R. Bagley, His Attorneys:

Please take notice that the within Motion is hereby noticed for hearing upon January 8th, 1940, before the above-entitled Court. Appellants intend to rely upon the Points, Authorities and Argument appended to said Motion as therein presented, and to submit the same without oral argument.

(Signed) Martin J. Bernards, Lena Bernards, Appellants.

[File endorsement omitted.]

[fol. 270] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT

[Title omitted]

MOTION OF APPELLEES TO DISMISS APPELLANTS' MOTION AND PETITION FOR RECALL AND CORRECTION, AMENDMENT, REVISION AND/OR OPENING AND VACATING MANDATE AND JUDGMENT ENTERED THEREON—Filed January 12, 1940

Come now the appellees herein and respectfully move the court that that certain motion and petition of appellants entitled "Motion and petition for recall and correction, amendment, revision and/or opening and vacating mandate and judgment entered thereon" be dismissed and quashed upon the ground that this court is without jurisdiction to recall its mandate in the above entitled cause or to revoke or modify its final decree herein, for the reason that long

prior to the filing of said motion and petition by appellants the term at which said final decree was entered had expired and the mandate of this court had issued and had been duly entered by the court below.

Platt & Black, H. G. Platt, A. D. Platt, Geo. Black, Jr., Wm. L. Brewster, Attorneys for Appellees.

[fol. 271] Notice to Appellants, Martin J. Bernards and
Lena Bernards

Please take notice that the within motion to dismiss is hereby noticed for hearing upon January 16, 1940, before the above entitled court, or at such later time as the court may appoint. Appellees intend to rely upon the points and authorities appended to said motion and the memorandum served upon you and filed herewith, and to submit the same without oral argument.

Platt & Black, Wm. L. Brewster, Attorneys for Appellees.

[File endorsement omitted.]

[fol. 272] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT

ORDER SUBMITTING MOTION FOR RECALL OF MANDATE—January 18, 1940

Ordered motion of appellants for recall of the mandate of this Court heretofore issued on October 28, 1939, submitted to the court for consideration and decision on papers filed.

[fol. 273] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT

ORDER DENYING PETITION FOR RECALL AND CORRECTION, AMENDMENT, REVISION AND/OR OPENING AND VACATING MANDATE AND JUDGMENT ENTERED THEREON—March 22, 1940

Upon consideration of the petition of appellants, filed January 2, 1940, for recall and correction, amendment,

revision and/or opening and vacating mandate and judgment entered thereon and motion of appellees to dismiss appellants' motion, etc., filed January 12, 1940, and by direction of the Court, Ordered said petition of appellants be, and hereby is denied.

[fol. 274] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 275] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 29, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: In forma pauperis Enter petitioners pro se. File No. 44,314. U. S. Circuit Court of Appeals, Ninth Circuit, Term No. 907. Martin J. Bernards and Lena Bernards, Petitioners, vs. M. R. Johnson, Catherine Collins, The United States National Bank of Portland, et al. Petition for a writ of certiorari and exhibit thereto. Filed April 12, 1940. Term No. 907 O. T. 1939.